EXCERPTS FROM TRANSCRIPT OF HEARING

Testimony of Mills Cox

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Direct Examination

By Mr. Head:

Q. Please state your name and residence. A. My name is Mills Cox. My residence is Houston, Texas.

Q. Are you familiar with exhibits which have been numbered 3-C through 3-K in this hearing consisting of agreements relating to the purchase of gas from the Rayne Field, Arcadia Parish, Louisiana?

Presiding Examiner: They would all be a part of exhibit 3 as they are now numbered.

Mr. Head: I see. I am sorry, your Honor.

By Mr. Head:

Q. Are you familiar with exhibit 3? A. Yes, sir.

Q. Are you also familiar with exhibit 41, being a schedule of gas prices paid and offered by certain pipeline companies for gas produced in South Louisiana? A. Yes, sir.

Q. Have you prepared a statement of your testimony relating to those exhibits and other matters within your jurisdiction as vice president in charge of Texas Eastern's gas supply which was formerly numbered hearing exhibit No. 47; a copy of which has been furnished to the reporter? A. I have.

Q. Do you have any changes to make in that exhibit in

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view of the renumbering of certain other exhibits? A. Yes. On page 8 I would like to strike beginning from the fourth line from the top of page 8 the sentence beginning "There are attached hereto" and ending "offered for gas in south Louisiana."

Q. Would you like to insert anything in lieu of that sentence you have requested to be stricken? A. I now identify exhibit number 41, which consists of schedules of prices currently being paid and offered by certain pipeline companies for gas produced in south Louisiana, and which were prepared under my supervision and direction.

And I would like to make one other change on page 8.

It appears on that page that there has been an omission in the sentence beginning at the top of the page which should read "These schedules show the purchaser of the gas, the Federal Power Commission dockets in which the prices have been filed or approved."

The words "filed or" appear to have been omitted.

Q. You wish to insert after the word "they" the two words "file or"? A. The words "filed or approved."

Presiding Examiner: At the end of what has been the seventh line before the deletion?

The Witness: That is correct.

By Mr. Head:

Q. As so changed by you, does the statement of your testimony—is the statement of your testimony true and correct to the best of your knowledge and belief? A. It is.

Q. Was that statement prepared by you? A. Yes, sir.

Q. Do you adopt that as your testimony? A. I do.

Mr. Head: Your Honor, we ask that the statement be copied into the record as though read, with the changes made?

Presiding Examiner: With the changes made by the witness on the stand as to the items on page 8, the testimony of Mills Cox as it appears in the document so marked will be copied into the record as if read.

I hear no objection.

(The testimony referred to is as follows:)

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SUPREME COURT, U.S.

VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 644

THE UNITED GAS IMPROVEMENT COMPANY, PETITIONER,

vs.

CONTINENTAL OIL COMPANY, ET AL.

No. 693

FEDERAL POWER COMMISSION, PETITIONER,

vs.

M. H. MARR, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NO. 644 PETITION FOR CERTIORARI FILED NOVEMBER 2, 1964
NO. 693 PETITION FOR CERTIORARI FILED NOVEMBER 16, 1964
CERTIORARI GRANTED JANUARY 18, 1965

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IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

Nos. 20560, 20564, 20582, 20587, 20829, 20846, 20847, and 20591

M. H. MARR, SUN OIL COMPANY, CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION, *Petitioners*,

v.

FEDERAL POWER COMMISSION, *Respondent*.

On Petitions to Review Opinions and Orders of the Federal Power Commission

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JOINT APPENDIX

(Volume I)

Testimony of Mills Cox

My name is Mills Cox and my residence is Houston, Texas.

At the present time I am Executive Vice President of Transwestern Pipeline Company and prior to that time, through October 31, 1957, I have been Vice President of Texas Eastern Transmission Corporation and in charge of and responsible for the gas supply of Texas Eastern.

I joined Texas Eastern in April, 1948, as Manager of Gas

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Supply, and was made a Vice President in April, 1950.

Prior to my association with Texas Eastern, with the exception of the time for my education in the service in World War II, I have been engaged in various phases of the oil and gas business from 1918, and this experience and association has continued until the present time.

As a part of my duties and responsibilities with Texas Eastern, I at all times kept myself as fully informed as possible with the gas reserves available for purchases in the areas traversed by its pipelines, as well as the prices being paid and offered for gas by Texas Eastern's competitors in such areas.

I will cover Exhibits numbered 3-C through 3-K, inclusive in my testimony. Exhibits 3-C through 3-F are Gas Purchase Contracts, each dated February 1, 1957, executed by Texas Eastern with Continental Oil Company, Sun Oil Company, General Crude Oil Company and M. H. Marr, respectively, covering the purchase by Texas Eastern of an aggregate of 104,000 Mcf of gas per day at a pressure base of 15.025 psia from the Rayne Field, Acadia Parish, Louisiana.

Each contract is for a primary term of 20 years from the date of initial delivery of the gas and the four contracts

cover a major gas reserve which has been estimated to contain in excess of 750 billion cubic feet of proven gas reserves.

I personally executed and negotiated each of these

contracts in my capacity as Vice President of Texas Eastern.

Exhibit 3-G is an agreement whereby Continental is designated as agent for sellers. Exhibits 3-H through 3-K are separate agreements with minority interest owners covering the purchase of their gas upon the same general terms and conditions as are contained in the four principal contracts.

Each of the contracts provides for an initial price of 22.6 per cent per Mcf with an annual fixed escalation in the amount of four mills per Mcf on the first day of November of each year for the first 19 years of the primary contract term.

The sellers under the contracts are entitled to reimbursement for the present Louisiana gas gathering and severance taxes, plus seven-eighths of any increased or additional taxes levied on the gas to be delivered under the contracts.

The payment of this price was conditioned upon the dedication by the sellers of a total gas reserve of not less than 730 billion cubic feet of gas. The sellers are required to gather and deliver the gas at a central point in the Rayne Field. The gas to be delivered will be dehydrated gas having a heating value of not less than 1,000 Btu per cubic foot and conforming to Texas Eastern's usual quality specifications.

No adjustment is made in price for gas delivered with a heating value in excess of 1,000 Btu. However, if the Btu content of the gas falls below 1,000 Btu, Texas Eastern may elect either to refuse to accept delivery or to reduce the price

in proportion to the reduction in Btu content below 1,000 Btu per cubic foot.

The Rayne Field is easily accessible to Texas Eastern's existing pipeline system, being located only approximately 19 miles south of Texas Eastern's 30-inch Beaumont, Texas, to Kosciusko, Mississippi, tie line, which was authorized in Docket No. G-2503.

The Rayne gas reserve is the first reserve which Texas Eastern has been able to acquire for delivery into this 30-inch line since the date of its completion in the latter part of 1955.

I strongly recommended the purchase of the Rayne Field gas to Texas Eastern's management for a number of reasons.

As Vice President in charge of Texas Eastern's gas supply, it was, of course, essential that I keep abreast of the future estimated demands of Texas Eastern's customers in order that I could attempt to acquire sufficient additional gas reserves from time to time to meet the present and long-range needs of Texas Eastern's customers.

In this connection I was advised that Texas Eastern's customers have requested an additional 250 million cubic feet of gas commencing in the Fall of 1958, and have estimated that their requirements will increase by a total of approximately 500 million cubic feet of gas per day over the next five years.

The purchase of the Rayne Field gas is essential if Texas Eastern is to supply even a portion of this known increased demand of its customers.

In seeking available gas to satisfy the constantly increasing demands of Texas Eastern's customers, I was necessarily limited to the gas reserves available for purchase in

the areas traversed by Texas Eastern's existing pipeline system.

Texas Eastern has already purchased most of the availabl gas reserves offered for sale in the areas contiguous to the Big Inch, Little Big Inch, and Wilcox Trend System lines.

As a consequence, the only uncommitted gas reserves of any substantial magnitude available for purchase in the areas accessible to Texas Eastern's existing system are the proven gas reserves in Mexico and the South Coast of Texas in the area of Texas Eastern's 30-inch South Texas pipeline extension from Beaumont, Texas, to Hidalgo County, Texas, which was certificated in Docket No. G-9784, and the large gas reserves located in South Louisiana which are accessible to the Company's 30-inch Beaumont to Kosciusko tie line.

Texas Eastern expects to be able to continue to purchase substantial quantities of gas for delivery into its South Texas line. However, I am convinced that it must also enter the South Louisiana gas market if it is to obtain the additional supplies of gas of sufficient magnitude to meet its customer's demands.

This conviction is based upon a number of factors. In the first place, although the uncommitted and available gas reserves accessible to Texas Eastern's South Texas line are large, they are not large enough to supply the estimated increased requirements of Texas Eastern's customers.

Moreover, the competition for the purchase of such reserves is extremely active with the result that Texas Eastern has recently lost out on several rather large potential purchases in this area because of higher prices offered by its competitors.

Therefore, I am of the opinion that it is essential that Texas Eastern also seek gas supplies in other areas. The large uncommitted gas reserves in Southern Louisiana make that area the most logical place for Texas Eastern to seek reserves to augment the reserves which I expect it to acquire in South Texas.

The acquisition of the Rayne Field reserve is the first and most important step in Texas Eastern's plan to acquire additional gas reserves to supply the existing needs of its customers.

Secondly, but equally as important, the prices being offered and paid for gas in the South Coast Area of Texas are now approaching the prices being paid in South Louisiana despite the fact that South Louisiana gas is nearer to the market area and thus more valuable to the pipelines.

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For example, in Docket No. G-9960, the Commission authorized Coastal Transmission Company to construct a pipeline along the same area traversed by Texas Eastern's South Texas pipeline and to purchase gas in competition with Texas Eastern under a price schedule containing initial prices ranging from 16 cents to 17 cents per Mcf in Texas Railroad Commission District No. 4 and from 17½ cents to 18 cents per Mcf in Texas Railroad Commission District No. 3.

The certificate issued in this same docket also had the effect of permitting two Florida power companies to purchase gas in South Texas on a non-jurisdictional basis at an initial price of 16½ cents per Mcf with an adjustment for fluctuations in the price of Bunker C. fuel oil.

On the basis of the October prices of Bunker C fuel oil, this adjustment would bring the South Texas gas producer a price of 22.6331 cents per Mcf. Further Consolidated Edison Natural Gas Company is offering to purchase gas in

Duval and Bee Counties, Texas, at a starting price of 19¼ cents per Mcf on a non-jurisdictional basis, which gas is to be transported to New York for Consolidated Edison by Transcontinental Gas Pipeline Corporation. Long Island Lighting Company is also attempting to purchase gas in South Texas on a non-jurisdictional basis for transportation by Transcontinental.

In addition to these proposed non-jurisdictional purchases by out of state utilities and gas distributing companies,

the local Texas utilities and industries are also offering and paying prices for gas in South Texas considerably in excess of those currently beng paid by Texas Eastern in the areas adjacent to its Gulf Coast and South Texas pipelines.

In this connection, the Celanese Corporation, which has a Celanese plant in Nueces County, Texas, recently purchased from Pan American Petroleum Corporation the gas from four fields in Hidalgo County, Texas, having an estimated recoverable reserve in excess of 400 billion cubic feet of gas for an initial price of 16 cents per Mcf for a two-year period with an increase of one cent per Mcf after the expiration of such two-year period and every three years thereafter. Texas Eastern had tried diligently to purchase this gas but was unable to meet either the prices or the non-jurisdictional sales basis offered by Celanese Corporation.

The Central Power and Light Company of Corpus Christi, Texas, has also recently acquired reserves located in Hidalgo County, Texas, in competition with Texas Eastern under contracts providing for a starting price of 18 cents per Mcf and is in the market for additional supplies of gas for their expanding power plants in both Hidalgo and Nueces Counties.

Another instance of a considerable volume of gas going to the intrastate market in Texas was the very recent sale of a large volume of gas in Atascosa County, Texas. About four years ago there was a renewed wildcat activity in the so-called

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Wilcox Trend Area for the purpose of exploring the possible producing horizons known to exist below the base of all the Wilcox sands.

The chief objective of this exploration was the Edwards Lime, which was known to produce oil and gas in other areas on a trend or strike with the Wilcox Trend, and in some instances West of the Wilcox Areas.

As a result of these activities, there has been developed through Atascosa, McMullen and La Salle Counties several gas discoveries in the Edwards Lime producing horizon. The better producing portion of this area now is in and around the Fashing area in Atascosa and Karnes Counties, Texas, and there was developed in this area some four to five hundred billion cubic feet of gas.

This gas was sufficiently close to Texas Eastern's system that we made a determined effort to purchase it. However, the gas was sold by the producers, Lone Star Producing Company and Gulf Oil, on an intrastate basis at a starting price of 15 cents per Mcf, with this price increasing one-half cents per Mcf per year for the first ten years, and then a renegotiated new price taking into account gas prices in the area at that time, and the renegotiated price to continue for the second ten years.

After considering the upward trend of gas prices in the South Texas Area, the large intrastate market in area, and the

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competitive situation, Texas Eastern's management approved my recommendation that Texas Eastern should

attempt to acquire a portion of the South Louisiana gas reserves.

Prior to this decision, I had at all times followed and kept current with the development of the gas reserves of the South Louisiana area, particularly the large reserves which were readily accessible to Texas Eastern's system, and with the prices being paid by its competitors in the area.

These are attached hereto, as an appendix to my testimony, schedules showing the prices currently being paid and offered for gas in South Louisiana. These schedules show the purchaser of the gas, the Federal Power Commission Dockets in which the prices have been approved and where possible, the starting date of these existing price schedules.

I have also shown the five-year averages of the prices and the 20-year average of such prices. There is included in this schedule a comparable schedule for the price Texas Eastern has agreed to pay for the Rayne gas.

Of the three large reserves that could have been easily reached from Texas Eastern's South Louisiana line, the Rayne field, in Acadia Parish, was the only one that remained uncommitted at the time Texas Eastern actively entered the market in South Louisiana.

The other two reserves had been bought by Texas Eastern's competitors who were paying prices in excess of Texas Eastern's

price. Inasmuch as the Rayne Field was only approximately 19 miles from Texas Eastern's South Louisiana line and the recoverable reserve, which exceeds 750 billion cubic feet of gas, was one of the larger uncommitted reserves in the South Louisiana area, Texas Eastern's management authorized me to exert every effort to acquire this reserve. We were convinced that in order to acquire a reserve of such large magnitude, we would have to offer a price com-

patable to or better than the prices then being paid and offered by our competitors.

We were equally convinced that unless we entered the South Louisiana gas market promptly, we would lose all opportunity to obtain for our customers a share of the prolific reserves in this area because our competitors are continually expanding their gathering systems in the area and are thus in a much more favorable position to offer producers both the higher prices as well as prompt delivery connections.

At the time we commenced negotiations for the Rayne Field gas, we were confronted with the fact that most of our competitors were paying and offering prices in excess of 20 cents per Mcf for gas in South Louisiana.

In many instances, such prices were and are being paid and offered for gas reserves of smaller magnitude, located in more remote, inaccessible areas of South Louisiana.

Further, in Dockets Nos. G-9262 and G-9960, the Federal Power Commission had issued an order whereby two Florida power

companies were permitted to purchase gas in two fields, Chocahoula and Bayou Mystic in La Fourche and St. Martin Parishes, South Louisiana, on a non-jurisdictional basis at an initial price of 20½ cents per Mcf with an adjustment for fluctuation in the price of Bunker C. fuel oil, which on the basis of the October prices of Bunker C fuel oil, brings the price of 26.6732 cents per Mcf.

In my opinion, in view of the magnitude of the gas reserve dedicated by the sellers, the close proximity of the Rayne Field to Texas Eastern's existing system, the prices being paid and offered by Texas Eastern's competitors and the general shortage of gas available to meet the ever increasing demands of the gas consumers, the price at which we succeeded in purchasing the Rayne Field reserve is

certainly not more than a reasonable market price for the quantities of gas involved in this purchase.

Moreover, such price was arrived at by arm's length bargaining and in aggressive competition with almost every other pipeline company purchasing gas in South Louisiana.

Based upon my many years of experience in the oil and gas business and my knowledge of existing contracts for the purchase of gas in South Louisiana, as well as negotiations for the purchase of gas in that area, I am of the firm opinion that the price provided for in the Rayne Field contracts is the lower price at which this gas could have been purchased under the circumstances and conditions existing at the time

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the contracts were negotiated.

I am of the further opinion that it would be extremely difficult to purchase this gas reserve today at the prices provided for in the Rayne Field contracts. For example, there is presently being paid and there has been agreed to be paid for future supplies of gas on an intrastate basis in South Louisiana, a starting price of 22½ cents per Mcf plus reimbursement of all the existing Louisiana taxes.

This price becomes 25 cents per Mcf in 1962, and at the end of the first ten years of deliveries, the seller has the right of a price redetermination based on the average of the two highest prices then being paid for gas in South Louisiana.

It is, of course, fundamental that gas can be purchased for intrastate use at a lesser price than for interstate transportation and resale because a seller in intrastate commerce is relieved of the uncertainty as to the price which he will receive for his gas as well as the expense of regulatory proceedings necessarily involved in an interstate sale.

It is my further opinion, based on the tremendous demand for additional supplies of natural gas, particularly over the past three years, that the pressure of the demand for such additional supplies of natural gas has increased the price in spite of the pressure of the regulation to reduce the price.

The effect of the purchase of the Rayne Field gas at the

price provided for in the contracts will in and of itself have only a minor effect upon Texas Eastern's overall average cost of system gas. In no instance will the average system cost of purchased gas be increased by as much as one-half cents per Mcf. This calculation is based on several different approaches in estimating the average cost of purchased gas by using Texas Eastern's so-called main line purchase contracts at both minimum and maximum load factors and by computing costs of gas at existing rates, as well as at the rates which our pipeline suppliers are now collecting and will collect subject to refund.

In reaching the decision to purchase the Rayne Field gas, Texas Eastern gave full consideration to the possible impact of the purchase upon existing Gas Purchase Contracts containing favored nation clauses.

In this connection, Texas Eastern was advised by its attorneys that certain of the favored nation clauses in its pre-existing contracts are subject to an interpretation which would grant the sellers the right to receive the prices provided for in the Rayne Field contracts but that the question is not entirely free from doubt and is one which can only be resolved by the Federal Power Commission in proceedings instituted by the sellers.

Texas Eastern was further advised that even if such questions should be resolved by the Commission in favor of the

sellers, nevertheless under existing laws as well as proposed legislation, the sellers would not be entitled to receive a price increase unless and until the same is established to be a fair and reasonable price.

Acting upon this advice and my recommendations, Texas Eastern reached the decision that the advantages to be gained by acquiring the Rayne Field reserves far outweighed any possible exposure to price increases under favored nation clauses in existing contracts.

In this connection, the purchase of gas in other areas accessible to Texas Eastern's system at prices competitive with the higher prices being offered by competing purchasers would result in a like or even greater favored nation exposure.

In my opinion, Texas Eastern cannot afford to foreclose itself and its customers from future gas supplies simply because the price of gas has reached the point where additional purchases might bring about a situation whereby some of Texas Eastern's existing gas suppliers may be entitled to request and obtain a price increase which cannot exceed what the Federal Power Commission determines is a fair and reasonable price for the gas.

The addition of the Rayne Field reserve to Texas Eastern's system will greatly assist in meeting a critical need of its customers for additional gas supplies. In view of the large magnitude of this reserve, its strategic location and its close

proximity to Texas Eastern's system, and the highly competitive conditions which exist in the gas market today, I am convinced that Texas Eastern would not be able to supply its customers with comparable volumes of gas from other sources at a cost less than the cost which will be incurred in delivering the Rayne Field gas.

(125)

Mr. Cox: Mr. Examiner, it appears that on page 6, the first line, the company named Consolidated Edison Natural Gas Company, I believe the reference is probably to the New York utility which has the name of Consolidated Edison Company of New York, Inc.

Presiding Examiner: Yes. I wonder if that is in error there.

Mr. Head: Yes, your Honor, I believe that is in error.

We would ask permission that that be changed to reflect the true name.

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Presiding Examiner: That the words "natural gas" be struck and comma "Inc." be added after "company" in the first line at page 6. That is an additional change which the reporter will make in transcribing the testimony.

Mr. Head: Yes, your Honor, we request that that be done.

Presiding Examiner: It will be so done by the reporter. Thank you.

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Mills Cox

was recalled as a witness and, having been previously duly sworn, was examined and testified further as follows:

Presiding Examiner: All right. I believe you were starting to question yesterday afternoon.

Mr. Kirby: Yes. Thank you, Mr. Examiner.

Presiding Examiner: Proceed.

Cross Examination (Resumed)

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By Mr. Kirby:

Q. Now, Mr. Cox, as Mr. Head has pointed out, on page 156 of the transcript yesterday, he stated that there were actually 32 contracts that would possibly be triggered. Now

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are the 18 contracts that you spoke about yesterday, are they included in those 32 or are they in addition to the 32? A. The 18 contracts are included in the total of 32.

Q. The nine million dollars—nine million one—applies to the first 18, is that correct? A. The nine million dollars applies to the total of 32.

Q. Thirty-two? A. Yes, sir.

Q. Well, on page 151, Mr. Mills, you definitely stated that six of the contracts were directly affected and then twelve would be affected by the first six, and you said the total daily volume covered by those 18 contracts was 350 million feet per day. Is that increase—— A. Let me correct that. I should have stated 32 contracts instead of 18, and there are 18 that would be directly affected and the other 14 would be indirectly affected. But the total volume is the 315 million.

Q. Three hundred and fifteen or 350 million feet? A. Three hundred and fifteen.

Q. You had 50 yesterday. It should be 315? A. No, I said 315 yesterday.

Q. Oh, I see. The transcript has 350. A. Three hundred and fifteen million, but the change in the contract does not affect the maximum dollar expenditure which

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I stated yesterday.

Q. With regard then to the 32 contracts, you have explained to us the districts and parishes involved, and I would just like to ask you in what district the Provident City Field is located. A. I would like to add to the Texas Railroad Commission districts a portion of Texas Railroad Commission Distirct 2. That is in which the Provident City Field is located.

Q. Now I would like to ask you, Mr. Cox, in what district

in Texas the Waskon Field is located? A. Texas Railroad Commission District 6.

Q. None of these 32 contracts then would trigger any contract in District 4 of Texas, am I right on that? A. None on District 4. It would not affect them.

Q. Now in addition to the 32 contracts which we have just spoken about, Mr. Cox, isn't it true that a lot more of Texas Eastern contracts have escalation clauses of some sort? A. They have both the annual fixed escalation and some of them have the price redetermination provisions.

Q. And do they have, or are there others than the 32 which have favored nations clauses? A. There are, yes, sir.

Q. These favored nations clauses are what I would call diverse in the sense that they are not all alike in all your contracts.

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A. They are not all exactly similar. The terms and conditions or the substance of them are comparable but not exactly similar.

Q. And that is the reason, I take it, that some of them would be triggered by some of the system-wide contracts and others would not? A. That is correct, yes.

Q. Is it a fair statement to say that these favored nations escalation clauses are somewhat complicated and that reasonable men might differ as to their interpretation? A. Well, I wouldn't attempt to give a complete interpretation to all of them, and I think that would be a matter that would take considerable legal interpretation and study to make the correct analysis of them.

Q. Well, are there any other contracts of Texas Eastern then—for example, in District 6—other than that would be included in the 32 which have favored nation escalation clauses in them? A. There are other contracts in Texas Railroad Commission District 6 that have favored nations provisions.

Q. And would that answer also be true for, say, Districts 3 and 2 and the Louisiana parishes you mentioned? A. It would be true in the Texas Railroad Commission districts, and I believe it would be true in the parishes in Northwest Lousiana, although some of those contracts in

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Northwest Louisiana, the favored nations provision is tied to Texas Railroad Commission District 6.

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Redirect Examination

By Mr. Head:

Q. Mr. Cox, you mentioned the Old Ocean Field as being adjacent to Texas Eastern system. Is the gas in the Old Ocean Field currently being offered for sale by the owners of that gas? A. It is not.

Q. What are they doing with that gas? A. The gas that would be available for sale is now being cycled for a liquid recovery program.

Q. Thank you, that is all I have.

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Opening Statement

On Behalf of Public Service Commission of the State of New York

by

Lawrence M. DeVore

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In this case where the producers are not required to obtain Commission approval of their sale of gas leases, the Commission cannot rely upon a subsequent Section 5 proceeding to provide the opportunity for a review of the pro-

ducers' costs relative to their gas leases and thereby protect the consuming public from excessive gas costs.

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Opening Statement

On Behalf of Public Service Electric and Gas Company

by

Edward S. Kirby

Mr: Kirby: Mr. Examiner, as Mr. Deakins has stated, on October 15, 1958, we sent a letter in to the Commission and stated we had no objection to the change in their application. The only thing that we did was we asked to reserve our right to examine into the reasonableness of the cost of the gas. That is all.

Presiding Examiner: All right. So, you do expect to have some questions on that as to the negotiations which took place, is that it?

Mr. Kirby: Pardon?

Presiding Examiner: You expect to have some questions in regard to negotiations which took place?

I am trying to find out how much cross-examination of the witnesses we can expect.

Mr. Kirby: Well, I will certainly try and limit my questions to a minimum, Your Honor.

Presiding Examiner: All right.

Brooklyn Union Gas Company, Mr. Hill?

Mr. Hill: Brooklyn Union Gas Company does not desire to

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make a statement at this time.

Presiding Examiner: No statement. You are not taking any position at this time?

Mr. Hill: Not at this time.

Presiding Examiner: All right.

Nobody has appeared yet in behalf of Equitable Gas Company, I believe.

(No response.)

Mr. Miller.

Opening Statement

On Behalf of Philadelphia Electric Company

by

Samuel G. Miller

Mr. Miller: Mr. Examiner, under date of October 3, 1958, we wrote the Commission and stated our position with regard to reopening and amendment. We said we did not protest or oppose the reopening or amendment, but the final sentence of that letter reads as follows:

> "The contemplated purchases of gas in place by Texas Eastern Transmission Corporation are not now before the Commission for approval but Philadelphia Electric Company reserves all rights to participate in any future proceedings involving the purchases and to oppose any rates based partly or entirely on the purchase arrangements."

I do not contemplate that we will have extended cross-

examination in this proceeding, but I would like to reserve the right to ask such questions as may appear necessary.

Presiding Examiner: I see.

Thank you.

Mr. Flaningam.

Mr. Flaningam: Your Honor, we have no statement or position to state at this time. It would appear from our understanding of what Texas Eastern has done and is now proposing that they have certainly made substantial progress in the right direction and we are very pleased to see

that, but we would like to reserve until later any definitive statement of our position.

Presiding Examiner: In other words, you are not prepared to give a pat on the back yet, until they have accomplished everything?

Mr. Deakins: Well, I thought that was one.

Mr. Flaningam: Mr. Deakins thought I had patted him on the back.

Presiding Examiner: All right.

Mr. Flaningam: I think it must be said it amounted to that because it seemed to me that they made a substantial step in the direction we like to see and I think most customers like to see, but we are reserving until later any definitive statement. I don't expect we will have many questions in this proceeding.

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Presiding Examiner: All right.

Mr. Mann.

Opening Statement

On Behalf of United Gas Improvement Company

by

J. David Mann

Mr. Mann: Mr. Examiner, the position of the United Gas Improvement Company is essentially that expressed by Mr. Miller as being the position of the Philadelphia Electric Company, and perhaps it is best stated in a letter which Philadelphia Gas Works sent to Mr. Kane, vice president of Texas Eastern, under date of October 1, 1958.

If I may, I will simply read a pertinent portion of that letter:

"Because we view your most recent proposal as reflected in the petition and first supplement as a con-

structive step forward in the light of existing circumstances, we will express no objection before the Federal Power Commission to the certification of your project as now proposed. You will recognize, of course, that we cannot now determine the precise way in which the cost of this proposal may ultimately be reflected in your overall cost of service. For this reason, we reserve our full rights to participate in any rate proceedings which may come before the Commission and to take such position with respect to any increases in your overall cost of service which might result from additional

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cost to be incurred hereby as may seem appropriate."

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Stewart P. Osborn

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The Witness: I am Stewart P. Osborn, a resident of Shreveport, Louisiana, and am employed by Texas Eastern Transmission Corporation as Comptroller. I have testified previously in this docket.

This Exhibit M-10 was prepared by me and by others who are under my supervision and direction.

Exhibit M-10

Pages 1 and 2 of this exhibit show the proposed accounting for the initial cash payment of $12,420,500 and the amortization of this amount based upon the withdrawals of the net working interest reserves (783,498,800 M.C.F.).

Page 2 also shows the proposed accounting related to the payments of the non-interest bearing notes ($121,420,500 in total) and the amortization of these notes as gas is taken from the Rayne Field.

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A tabulation, page 3 of this exhibit, shows the "Ownership in Rayne Field", the "Cost to Texas Eastern", and the "Method of Payment" for the working interest.

Of the total 990,000,000 M.C.F., Continental Oil Company, Sun Oil Company, General Crude Oil Company, and M. H. Marr own 783,498,800, M.C.F. and royalty and minority interest own 206,501,200 M.C.F. Texas Eastern will pay $134,395,700 for the 783,498,800 M.C.F. representing the working interest portion of the leases and $46,669,300 for the 206,501,200 M.C.F.

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representing the royalty and minority interest portion of the leases. The average total cost of the gas produced will be approximately 18.29¢ per M.C.F.

Texas Eastern will pay the $134,395,700 as follows: $12,420,500 initial cash payment and $121,975,200 in notes over a period of about 16 years. The $46,669,300 for royalty and minority interest gas will be paid as the gas is taken from Rayne Field.

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E. A. Olsen, Jr.

. . . . . .

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The Witness: My name is E. A. Olsen, Jr. I have previously testified in Docket No. G-12446 which pertains to an estimation of the gas reserves and the availability of those reserves in the Rayne Field, Acadia Parish, Louisiana as of January 1, 1957. The firm of DeGoyler and McNaughton was commissioned by Texas Eastern Transmission Corporation to re-estimate the gas reserve in the Rayne Field, Acadia Parish, Louisiana as of January 1, 1959.

The Rayne Field is located approximately 55 miles east of the city of Lake Charles in Acadia Parish, Louisiana.

This field was discovered in 1953. From the time of discovery I have kept abreast with development to date.

Since the preparation of our last exhibit for Docket No. G-12446 as of January 1, 1957, several additional wells have been drilled in the Rayne Field. As a result of this additional development production has been established in one new reservoir, and a considerable degree of additional control was made available for the reservoirs that had been previously proved. These data have substantially increased the estimated gas reserve in this field as shown on Page 2 of Exhibit No. 13.

The reserves of this field were re-estimated by first constructing structural and isopachous maps on each proved reservoir.

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This was accomplished through the use of electric and micro-logs.

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Considerable coring was done in the field and from this information, the average porosity and interstitial water percentages and permabilities were determined for each reservoir. Reservoir pressures in this field are abnormally high, however, this is a common characteristic for fields of this type in this area, and as a result it is expected that these fields generally will be produced by pressure depletion. Assuming this field will be depleted through pressure depletion, I have arrived at a recoverable reserve by estimating a reasonable abandonment pressure.

The total proved salable gas reserves of the Rayne Field as of January 1, 1959 are estimated to be 1,021,221 million cubic feet of gas of which 988,771 million cubic feet of gas are conveyed to Texas Eastern Transmission Corporation. These figures are based on a pressure of 14.73 pounds per

square inch absolute and a temperature of 60 degrees Fahrenheit. Details of these reserves by reservoirs are on Page 2 of Exhibit No. 13.

Pages 3 and 4 include maps showing the estimated productive limits of each proved reservoir.

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(The document referred to, heretofore marked for identification as exhibit M-13 was received in evidence.)

1348

John C. Jacobs

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The Witness: My name is John C. Jacobs and I reside in Houston, Texas. I am Vice President of Texas Eastern Transmission Corporation in charge of its gas supply.

My testimony will deal with the arrangements which have been made by Texas Eastern for the purchase of the oil and gas leases presently owned by Continental Oil Company, Sun Oil Company, General Crude Oil Company, and M. H. Marr in the Rayne Field, Acadia Parish, Louisiana. These oil and gas leases cover approximately 95% of the working interest in the presently proved Rayne Field gas reserve. Through acquisition of such leases, Texas Eastern will be able to control 100% of this major gas reserve which is presently estimated to contain 990 billion cubic feet of economically recoverable pipeline gas reserves.

At the initial hearing in this proceeding, Texas Eastern offered evidence of its proposed purchase of gas from the Rayne Field pursuant to gas purchase contracts between Texas Eastern, as Buyer,

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and General Crude Oil Company, M. H. Marr, Sun Oil Company, and Continental Oil Company, as Sellers, which were received in evidence as Hearing Exhibit No. 3, Sections C, D, E, and F, respectively. Subsequent to the issuance of the Examiner's decision on April 15, 1958, Sun Oil Company, General Crude Oil Company, and M. H. Marr each served notice of cancellation of its gas purchase contract with Texas Eastern. These gas

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purchase contracts covered approximately 45% of the total Rayne Field gas reserves.

Texas Eastern has carried on lengthy negotiations for the purchase of the oil and gas leases covered by the aforementioned terminated gas purchase contracts as well as for the purchase of the oil and gas leases owned by Continental Oil Company in the Rayne Field and dedicated to the gas purchase contract between Texas Eastern and Continental Oil Company which is still in existence. These negotiations have been concluded satisfactorily and Texas Eastern has acquired the right to purchase all of the oil and gas leases and related rights and production equipment owned by Continental Oil Company, Sun Oil Company, General Crude Oil Company, and M. H. Marr in the Rayne Field, Acadia Parish, Louisiana. Briefly, the basic terms and provisions of the agreements whereby Texas Eastern has acquired such right of purchase may be described as follows:

Continental Oil Company, Sun Oil Company, General Crude Oil Company, and M. H. Marr (hereinafter referred to collectively as "Con-

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tinental, et al"), entered into a Lease Sale Agreement with Louisiana Gas Corporation, a Delaware Corporation not

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affiliated with Texas Eastern, whereby Continental, et al, have agreed to sell to Louisiana Gas Corporation their oil and gas leases in the Rayne Field, Acadia Parish, Louisiana, together with all

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gas wells and related lease equipment, both subsurface and surface, located on such leases. In the conveyance to Louisiana Gas, Continental, et al, will reserve all leasehold rights as to oil and all rights below the Nodosaria "A" Sand, which is the deepest known producing sand in the field. In addition, Continental, et al, will reserve a production payment payable monthly out of separator liquids and natural gas liquids after Louisiana Gas has recovered its costs of producing and operating the oil and gas leases, field gathering lines, and field separation facilities. Such production payment will continue until the gas produced and saved attributable to working interest equals 613,406,770 MCF measured after condensate is removed or until the economically recoverable gas reserves attributable to the working interest have been depleted to 30,000,000 MCF of gas.

The Lease Sale Agreement provides that Louisiana Gas will pay Continental, et al, for the conveyance of the leases and related equipment a total consideration of $134,395,700, payable $12,420,500 in cash at the time of closing and the balance of $121,975,200 payable in installments over a period of sixteen (16) years. The Lease Sale Agreement provides that Louisiana Gas will give Continental, et al, its

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promissory notes to evidence the installment payments, which notes will be secured by a mortgage on the leases and related

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properties.

Louisiana Gas, in turn, has entered into a Lease Purchase Agreement with Texas Eastern whereby Texas Eastern

has the right to acquire all of the oil and gas leases and related properties which Louisiana Gas may acquire from Continental, et al, for a cash consideration of $12,420,500. The conveyance of such properties from Louisiana Gas to Texas Eastern will be subject to the promissory notes and mortgage given by Louisiana Gas to Continental, et al, but Texas Eastern will not assume or agree to pay the same.

The closing of the sale from Continental, et al, to Louisiana and in turn the sale from Louisiana Gas to Texas Eastern is subject to the satisfaction of the following conditions:

(1) The Buyers' attorneys must approve title to the oil and gas leases to be transferred.

(2) Continental, et al, must secure rulings in writing from the Internal Revenue Service to the effect that the sale of the oil and gas leases will be considered a capital gain under the provisions of Section 1231 of the Internal Revenue Code of 1954. This condition has also been met as is evidenced by the letters from Continental, et al, attacted to Texas Eastern's Fourth Supplement to the Petition to Reopen the Hearing and to Amend the Application for a Certificate in this Docket No. G-12446.

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(3) Continental, et al, must obtain orders of dismissal or file unconditional notices to dismiss or notices of withdrawal of their applications for certificates of public convenience and necessity in FPC Docket Nos. G-12432, G-12885, G-12913 and G-12931. The applications in such dockets cover the proposed sale of gas to Texas Eastern pursuant to the gas purchase contracts mentioned above. Notices of withdrawal of their applications for certificates have been filed by M. H. Marr in Docket No. G-12885, General Crude Oil Company in Docket No. G-12931, and Sun Oil Company in Docket No. G-12913, and we are advised

that the Commission has already granted permission for withdrawal of such applications. In addition, Continental Oil Company has filed a Conditional Notice of Withdrawal of its Application in Docket No. G-12432 conditioned upon the granting to Texas Eastern of a certificate pursuant to its Motion to Reopen and to Amend.

(4) Certificates of Public Convenience and Necessity must be obtained from the Commission authorizing the construction and operation of such facilities as are necessary to enable Louisiana Gas (or its assignee Texas Eastern) to construct and operate such facilities as are necessary to enable the taking of gas from the Rayne Field and the transportation thereof to the market area. If the certificate requested by Texas Eastern in this proceeding is granted, such certificate will

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satisfy this remaining condition and thus enable the parties to close the trade.

Based upon our present estimates that the recoverable gas re-

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serves in the Rayne Field are equal to 990,000,000 MCF of gas, we have calculated that the average cost of the Rayne Field gas per MCF to Texas Eastern will be 18.29¢. This average cost of gas was computed as follows:

The ownership of Continental, et al, in the working interest of the Rayne Field is 79.14129% or 783,498,000 MCF. The royalty and minority interests own 20.85871% of the total interest in the field or 206,501,200 MCF, expressed at 15.025 psia. The cost to Texas Eastern of the working interest gas is 17.15¢ per MCF which was determined by dividing the purchase price of $134,395,700 by 783,498,800 MCF, which is the working interest share of the gas to be produced from the Rayne Field. The maximum price to be

paid for the royalty and minority interest gas is assumed to be 22.6¢ per MCF, which, when multiplied by 206,501,200 MCF or the royalty and minority interest share in the Rayne Field gas, results in a cost of $46,669,300. An average of the two costs is 18.29¢ per MCF.

When the average cost of 18.29¢ per MCF (exclusive of return and related taxes) is compared with the average cost of 26.6¢ which would have resulted under the gas purchase contracts

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introduced in evidence at the initial hearing, it is obvious that a considerable saving will be effected and when that saving is considered over the twenty year period it can readily be observed that the consummation of this arrange-

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ment has many advantages over that presented in the earlier phase of these proceedings.

During the original hearing in these dockets testimony was offered to show that the Rayne Field gas purchase contracts could cause possible increased costs of gas to Texas Eastern by the triggering of favored nation clauses in certain of its existing gas purchase contracts and that this triggering effect could increase the cost of gas purchased under other Texas Eastern contracts by from $3,500,000 to as much as $10,000,000 annually. Indeed, claims were made by some that the cost of gas to Texas Eastern would be increased even more than $10,000,000 per year by this triggering effect. Texas Eastern's purchase of the oil and gas leases covering the Rayne Field will eliminate the Rayne gas purchase contracts, and thus completely eliminate any possible triggering of favored nation clauses in the Company's other gas purchase contracts.

In addition, the Rayne Field gas purchase contracts provided for automatic escalations of 4 mills per MCF per year

which would have brought the average cost of the Rayne Field gas to Texas Eastern to 26.6¢ per MCF over the full term of the contracts.

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Such contracts also contained provisions for price redeterminations prior to the beginning of each of the five year periods commencing on November 1, 1967, and November 1, 1972. Although it is impossible to predict what increases would have been brought about by such price redeterminations, there, of course, was always the possibility that the increases would be substantial. By purchasing the

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oil and gas leases Texas Eastern has completely eliminated the possibility of any future prices increases.

Apprehension as to the effect of the purchase of the gas at prices approximating the original contract price (23.9¢) upon gas purchase contracts between producers and other pipeline companies was also expressed by certain of the intervenors in the original hearing. Obviously, the purchase by Texas Eastern of the oil and gas leases of Continental, et al, for a fixed consideration will not have any effect whatsoever on existing or future gas purchase contracts of either Texas Eastern or other pipeline companies.

From a knowledge of the escalation provisions in gas purchase contracts generally it is my opinion that the acquisition by Texas Eastern of the Rayne Field gas leases in the manner now proposed will not have any deleterious effect upon any contracts or the price of gas generally. Moreover, the average cost of the Rayne Field gas to Texas Eastern under the proposed

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lease purchase will be far below the going price now being paid under gas purchase contracts for gas located in the same general area.

Our computations show that there will be a saving of approximately 8.31¢ per MCF at the average purchase cost of 18.29¢ per MCF to Texas Eastern under the lease purchase arrangement when compared with the average cost of 26.6¢ per MCF under the gas purchase contracts. Texas Eastern will also realize additional savings through increased flexibility

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of operations resulting from the ownership of the leases.

I have advised Mr. Warren Carr, a witness in these reopened proceedings, that in my judgment the maximum cost of royalty interest and other minority interest gas will not exceed 22.6¢ per MCF for the entire period of production. It was decided that this maximum price of 22.6¢ per MCF should be used in Mr. Carr's computations although there is a possibility that it will be less, depending upon what price can be negotiated. The cost of minority interest gas remains to be negotiated but will probably be the same (17.15¢) as above shown for the principal sellers under the Lease Sale Agreement.

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By Mr. Deakins:

Q. Mr. Jacobs, are you familiar with the acquisition of the leases in the Rayne Field? If so, state by what means you became familiar with them, with that transiton? A. I am familiar with the acquisition of the leases in the Rayne Field, Louisiana, and I became familiar with such acquisition through taking an active part in the negotiations that led to the acquisition.

Q. Now, are you famliar with the fact that there are certain minority interest owners in the Rayne Field? And when I refer to minority interest owners, I am talking about working interest owners who are distinguished from Continental Oil Company, Sun Oil Company, M. H. Marr, and

the General Crude Oil Company. Are you familiar with the fact that there are certain people? A. I am familiar with that fact.

Q. Do you know approximately what percentage of the working interest is represented by those other minority interest owners? A. Between four and five per cent of the total working interest.

Q. Do those minority interest owners consist of a lot of people, or a few people, or just small interests? A. This minority interest is owned by several people.

Q. Now, do you know whether or not prior to the

arrangements which are now—now have been made, whether there were outstanding any contracts between these minority interest owners and Texas Eastern? A. There were such contracts outstanding.

Q. What is the status of those contracts at the present time? A. Those contracts have been terminated.

Q. In your testimony you referred to the acquisition of the gas which is presently controlled by the working interest lease owners at a price of about 22.6 cents per Mcf. Is that gas of these minority interest owners included in that assumed price? A. It is.

Q. And why was that price assumed? A. Well, that price has been assumed from the standpoint of presenting a conservative picture at this hearing of the cost of gas to Texas Eastern.

Q. That is the cost of minority interest gas? A. That is right.

Q. Now, is that same price assumed with reference to the acquisition of the interest of the royalty owners? A. The same price has been assumed in regard to the royalty owner gas.

Q. Now, do you have any way of knowing whether or not that will be the price—the relative cost of that gas to

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Texas Eastern? A. I am of the opinion that that is the most that that gas could cost to Texas Eastern. I am also of the opinion that in connection with the minority working interest gas, there is every possibility that the price will be less than that.

Q. Well, now, have you negotiated looking towards the acquisition of the leases owned by the minority interest which you have just discussed? A. Yes, such negotiations have been opened.

Q. What is the status of those negotiations now? A. The status of those is that the minority working interest have indicated to us that they are interested in selling their leased interest to Texas Eastern under an arrangement similar to that which has been concluded with the other working interest owners at the Rayne Field.

Q. I take it from your testimony that those arrangements have not been concluded. A. They are not concluded as of today, but we expect to conclude them very shortly.

Q. I believe you testified that you couldn't say what those leases would cost you, at this time? A. That is correct.

Presiding Examiner: Then you are not standing on this 17.15 cents estimate that you put on the last page of your

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prepared testimony, is that correct?

Mr. Deakins: Mr. Examiner, that refers to that which has already been acquired—the leases already acquired. This 22.6 is the price that refers to the minority interest owners, and the royalty interest. But the 18.29 is the average.

Presiding Examiner: Does the 17.15—the cost of minority interest gas remains to be negotiated—will probably be the same as above shown for the principal sellers under the lease sale agreement?

Mr. Deakins: Well, I asked the witness if he could be certain of what that price would be, and he said no. Here he says probably.

Presiding Examiner: All right. I just wanted to make sure there was a modification of this statement in the last paragraph.

The Witness: Mr. Examiner, if I may—it is not a modification of the statement in the last paragraph. What I have said here is that—this is in all the testimony—that the gas that has been contracted—the leases that have been purchased in the calculations in my testimony here represent a cost of gas to Texas Eastern of 17.15 cents per Mcf. I expect that we will be able to conclude the negotiations with the outstanding minority interest, this four or five per cent of the total working interest, at the same price. However, in orde

to present a conservative picture here, I have advised the people working up the other exhibits to assume a price of 22.6 cents in their exhibits.

Presiding Examiner: Thank you.

By Mr. Deakins:

Q. Incidentally, Mr. Jacobs, where did that price come from? What was that price before? That was the starting price, wasn't it, at which this gas was to be acquired under the contracts? A. The 22 6 cents was the initial price under the gas purchase contracts which have been terminated.

Q. And you just assumed that price as a conservative price? A. I took the initial price in those contracts which have been terminated to account, and also other factors in the market for gas in southern Louisiana.

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John C. Jacobs

resumed the stand testified further as follows:

Direct Examination—resumed

By Mr. Deakins:

Q. Mr. Jacobs, I believe that you stated you were familiar with Exhibit M-14 and Exhibits M-14, Exhibit I and Exhibit II. A. I am familiar with those exhibits.

Q. Now, state briefly without summarizing what Exhibit M-14 is.

Presiding Examiner: Let's get this straight. They are not

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separate exhibits?

Mr. Deakins: No.

Presiding Examiner: The Exhibit Roman I and II are exhibits to the lease purchase agreement which is the exhibit?

Mr. Deakins: Yes, sir. I was going to show that. I did misstate it, I think.

Presiding Examiner: I am trying to keep the language straight here.

Mr. Deakins: Yes.

By Mr. Deakins:

Q. Briefly, what is the lease purchase agreement which has been marked as Exhibit M-14? State what it is. A. The lease purchase agreement is the document by which Texas Eastern has the right to acquire certain leasehold interests in the Rayne Field of Louisiana.

Q. Are those the leasehold interests owned by Continental Oil Company, Sun Oil Company, General Crude Oil Company and M. H. Marr? A. Those are the leasehold interests owned by the companies that you have just enumerated.

Q. I will ask you whether or not any consideration is stated in Exhibit M-14 as consideration for the acquisition from Louisiana Gas Corporation of the leases by Texas Eastern? A. Such a consideration is stated.

Q. And how much is that?

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A. That consideration is $134,395,700.

Q. Now, is there any cash consideration stated in that view? A. The total consideration which I just stated, the cash portion thereof is $12,420,500.

Q. And that will be paid by Texas Eastern to Louisiana Gas Corporation, am I correct? A. That is correct.

Q. On what contingency? A. That——

Q. Or on what consideration. A. That amount will be paid by Texas Eastern to Louisiana Gas on closing date in consideration for the assignment of the leases to Texas Eastern by Louisiana Gas.

Q. All right.

Now, referring you to a document that is marked or is entitled "Lease Sale Agreement, Rayne Field, Acadia Parish, Louisiana," which is a part of Exhibit M-14 and has been marked Exhibit M-14, Exhibit Roman I——

Is that right, Mr. Examiner, is that the way?

Presiding Examiner: The whole document has been marked Exhibit Roman I. That includes not only the document marked "Lease Sale Agreement," but it also includes the assignment and conveyance, Rayne Field between Continental so-and-so and Louisiana Gas Corporation.

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By Mr. Deakins:

Q. Let me rephrase that question.

As part of Exhibit M-14 which is marked "Lease Sale Agreement," are you familiar with that, Mr. Jacobs? A. I

am familiar with the document marked "Lease Sale Agreement," which is Exhibit Roman I to Exhibit M-14.

Presiding Examiner: That is a part of Exhibit Roman I.

Mr. Deakins: That is right.

Presiding Examiner: Because Exhibit Roman I includes——

Mr. Deakins: An assignment and conveyance.

Presiding Examiner: An assignment and conveyance and some other—includes an assignment and conveyance, two apparently, I can't tell here. I know there is one 14-page document. Then there is another document of some 60 pages, and a third document which is called Exhibit B to the assignment and conveyance.

We have got exhibits to exhibits which is extremely confusing.

Mr. Deakins: You are right.

Presiding Examiner: I am going to ask for the sake of clarity that in the future when you tie these extra tails to exhibits you call them appendices, rather than exhibits. Give them some other name, because it is very confusing when you have several classes of exhibits, when you have a hearing exhibit and you have something else which is referred to as an

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exhibit because the witnesses keep constantly referring to them, and even in some cases counsel, as exhibits and it makes the record very hard to follow.

Mr. Deakins: We didn't put these on, Mr. Examiner.

Presiding Examiner: I know it is too late to do that. Maybe next time——

Mr. Deakins: Continental Oil people and others did that.

Presiding Examiner: You counsel were participating in negotiation, some members of your firm, probably, and they could have steered that if they had known and realized the complications involved. I am not asking you to make any

change now, because I know it can't be done, but I am just asking that in the future you try to see if you can't find some other name than "exhibit" for these various attachments.

Mr. Deakins: Those fellows don't think we do anything up here any how, Mr. Examiner, so I don't know whether I would make much impression on them.

Presiding Examiner: Well, maybe not. Maybe you had better bring some of them up here occasionally.

By Mr. Deakins:

Q. Mr. Jacobs, I had asked you what the part of Exhibit M-14 that is entitled "Lease Sale Agreement" between Continental Oil Company and others and Louisiana Gas Corporation dated December 4, 1958, is.

What does it do?

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A. It is the document by means of which under certain conditions Louisiana Gas Corporation will acquire certain leases in Rayne Field, Louisiana, said leases being the same leases which in turn are to be transferred by Louisiana Gas Corporation to Texas Eastern Transmission Corporation under the document heretofore referred to entitled "Lease Purchase Agreement."

Q. All right, sir. Now, the conditions you referred to are set out under Arabic numerals 1, 2, 3 and 4 on the first page of that exhibit, are they not, Mr. Jacobs? A. That is correct.

Q. And then referring you to a part of that exhibit which is entitled "Assignment and Conveyance, Rayne Field, Acadia Parish, Louisiana, between Continental Oil Company, et al, and Louisiana Gas Corporation, Grantee," will you please state what that exhibit is? A. The assignment and conveyance is the document by which title to the certain leasehold interests in Rayne Field will be actually trans-

ferred to Louisiana Gas Corporation when the conditions set forth in the lease sale agreement have been met.

Q. And the grantors are Continental Oil Company, Sun Oil Company, M. H. Marr and General Crude Oil Company? A. That is right.

Q. Is that right?

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A. That is right.

Q. Now, as the Examiner remarked a while ago, to that document, there is a document which says: "Exhibit A to Assignment and Conveyance, Rayne Field, Acadia Parish Louisiana between Continental Oil Company, et al, and Louisiana Gas Corporation as Grantee" dated, blank, 1959.

You are familiar with that document, too, are you not, Mr. Jacobs? A. I am familiar with that document too.

Q. State what that document is? A. That document is an exact description of the leasehold interest which will be transferred to Louisiana Gas Corporation when the conditions set for in the lease purchase agreement have been met.

Q. That is a list of leases, is that it? A. That is a list of leasehold interests to be transferred which in aggregate constitute approximately 95 to 96 per cent of the total working interest at Rayne Field, Louisiana.

Q. And also to the——

Presiding Examiner: Before you go into the document, I would like to ask him a question.

Mr. Deakins: All right, sir.

Presiding Examiner: Page 19 of this so-called Exhibit "A" to this document which is part of Exhibit Roman II—I notice there a lease dated June 2, 1958, but effective May 1, 1955. Is

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it customary to make leases retroactive in Louisiana, or do you know what—it wouldn't be a misprint or anything?

The Witness: I haven't seen it.

Presiding Examiner: It is about the middle of page 19 of Exhibit "A", which is the 60 page document. I happen to notice here "Lease dated June 2, 1958, but effective May 1, 1955, between Felecia Alleman Douga, as Lessor, and Robert H. Thompkins, as Lessee."

The Witness: Well, Mr. Examiner, to answer your question generally, it is not a common thing, but at the same time it is not an unusual thing. The retroactive effective date usually grows out of negotiations in regard to title.

By Mr. Deakins:

Q. You mean by that if there were some flaw in the title this was a means by which that could be directed? A. That is right.

Q. You haven't examined this lease I guess that we are discussing here to determine whether that is a fact or not? A. I have not.

Q. Referring you now to what is marked Exhibit B, "Assignment and Conveyance, Rayne Field, Acadia Parish, Louisiana, between Continental Oil Company, et al, as Grantors and Louisiana Gas Corporation, as Grantee," consisting of two tables, state generally what that is. A. The Exhibit B to which you have referred sets forth

in detail the method by which the production payment on the natural gas likewise is to be calculated at Rayne Field after the leases have been transferred to Louisiana Gas Corporation.

Q. Now, Mr. Jacobs, there is a part of Exhibit M-14 which is denominated "Conveyance." Will you state what that is. A. That part of Exhibit M-14 denominated conveyance is the legal document by which the leasehold interests at Rayne Field, after acquisition by Louisiana Gas Corporation, will be transferred to Texas Eastern Transmission Corporation.

Q. Now, has that document been executed? A. That document has not been executed.

Presiding Examiner: Nothing has been executed here except the lease sale agreement, has it?

Mr. Deakins: You meant the lease purchase agreement Mr. Examiner.

Presiding Examiner: Well we have got a lease sale agreement here which seems to have some type of signature on it which is the M-14 Exhibit I—Exhibit Roman I.

The Witness: Mr. Examiner, the only document in Exhibit M-14 which has been executed by Texas Eastern Transmission Corporation is the document entitled "Lease Purchase Agreement." As appears from the conformed copy of the lease sale agreement which is also a part of Exhibit M-14, the lease sale agreement has been executed by the proper

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parties to it.

Presiding Examiner: Well, that is what I thought. I wasn't asking whether it was executed. I was only referring to Exhibit Roman I and I said nothing about who had executed it, but I said that it appeared to be the only one. I believe you correctly have now answered that that is the only one of the three or four documents which make up by attachment Exhibit Roman I to Exhibit 14 which is executed by anyone.

The Witness: That is correct. The other documents are to be executed after the conditions set forth in the lease sale agreement have been satisfied.

By Mr. Deakins:

Q. Now, Mr. Jacobs, in this document entitled "Conveyance," on the second page, the testimonial paragraph concludes 1958. I will ask you whether or not that should not be 1959? A. It should be 1959.

Q. It is a typographical error.

Mr. Jacobs, you are familiar with these documents, will you state whether or not the title by the execution of these various documents you have described, whether or not the title to the leases owned by Continental, Sun, General Crude and Marr will be conveyed to Texas Eastern ultimately if the deal is consumated and the certificate issued and the four conditions met?

Mr. Huntsman: I object to the question or answer to the

question upon the grounds that no proper foundation has been laid for the answer by this witness as to what the title is. He is no expert on title, as far as we know.

Mr. Deakins: Wait a minute, Mr. Huntsman, I know better than that.

By Mr. Deakins:

Q. Mr. Jacobs, isn't it a fact that you are licensed to practice law in Texas? A. That is correct.

Q. Where did you practice, Mr. Jacobs? A. I practiced in Dallas, Texas.

Q. For how long? A. I practiced there for approximately seven years.

Q. What duties have you performed with Wilcox Trend and Texas Eastern. A. My duties with those two companies have been primarily concerned with the negotiations of contracts under which gas is acquired in different ways for the pipeline systems.

Q. Have you engaged in the practice of oil and gas law as it is known in Texas? A. I have.

Q. Are you familiar with various contracts and documents by which Texas Eastern has acquired title to gas and oil in Texas and Louisiana? A. I am.

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Mr. Deakins: Do you still have objections, Mr. Huntsman?
Mr. Huntsman: No, I think that clarifies it somewhat.
Presiding Examiner: That clarifies it, all right.

By Mr. Deakins:

Q. Now, Mr. Jacobs, I asked you that long involved question. I would rather not repeat it if you recollect the question.

Presiding Examiner: I think for the sake of the record, you better read it back so the rest of us will know when you answer it.

Mr. Deakins: All right, sir. Read the question back to the witness will you please, Miss Reporter?

(The record, as recorded, was read by the reporter.)

By Mr. Deakins:

Q. And the documents are executed.

Presiding Examiner: I thought that needed to be added.

That is one reason I wanted it read back. I didn't think there was anything of that in the original question.

Mr. Deakins: We don't want to leave that out.

The Witness: Upon the happening of the events set forth in your question. title on these leasehold interests would be Texas.

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By Mr. Deakins:

Q. And will that title be conveyed for the consideration expressed in the lease purchase agreement. A. It will so be.

Mr. Deakins: I have no further question of this witness.

. . . . . .

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By Mr. Deakins:

Q. Mr. Jacobs, are these documents, which make up Exhibit M-14, documents which have been prepared between Continental Oil Company, Sun Oil Company, M. H. Marr, General Crude, Louisiana Gas Corporation and Texas Eastern as the documents which will be executed for the purpose of mating the arrangements which you have described in your testimony?

Mr. Huntsman: I object to it upon the grounds that no proper foundation has been laid showing that this man has the knowledge of facts of the execution of these documents by parties other than Texas Eastern.

Mr. Deakins: Mr. Examiner, this man testified that he had handled the negotiations.

Presiding Examiner: He handled the negotiations. I am permitting the exhibit tentatively. I do think that there is, perhaps, and you can't get them all in here at once as far as that is concerned, but I think there may be somewhat of a

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weakness in the absence of any showing of the intent beyond what appears in the lease sale agreement on the part of the four vendors of the leases.

Mr. Deakins: Well, now, then, let me ask Mr. Jacobs another question.

By Mr. Deakins:

Q. Mr. Jacobs, in the negotiations which you carried on, did you negotiate in any part in behalf of Louisiana Gas Corporation? A. Yes, I did.

Q. And in what respect? A. In the sense that I was present at all of the meetings to the best of my knowledge at which the documents between Louisiana Gas Corporation and the present owners of these leasehold interests were developed.

Q. Are these firm obligations on the part of Texas Eastern and Louisiana Gas? A. Very definitely, yes.

Q. And do you know of your own knowledge whether those are firm obligations between Continental and the other leasehold owners and Louisiana Gas? A. Very definitely they are.

Mr. Deakins: I think that is all, Mr. Examiner.

Presiding Examiner: All right.

* * * * * * * * * * *

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By Mr. Deakins:

Q. Mr. Jacobs, was the Louisiana Gas Corporation formed specifically for the purpose of acquiring the gas

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leases from the four producers. A. If I may, let me say a little more than the answer to your question.

I am not acquainted with the corporate affairs of the Louisiana Gas Corporation.

On the otherhand, in negotiating for and arranging for the transfer of the leases at the Rayne Field from the present owners into the hands of Texas Eastern, it appeared that the best way to handle that arrangement of that transfer was through an intermediary corporation which here has been designated as Louisiana Gas Corporation.

Q. Was the Louisiana Gas Corporation set up by the four producers? A. To the best of my knowledge, it has not been set up by the four producers.

Q. Do you know who did set up the corporation? A. I do not. Again, let me come back to the point that I was making a minute ago and that is to move the leases into Texas Eastern there are advantages that grow out of passing leases into the hands of Louisiana Gas Corporation and then into the hands of Texas Eastern. One of those advantages is that Texas Eastern—and in turn is reflected in its

own business—Texas Eastern is not liable on the outstanding obligations between Louisiana Gas Corporation and the present owners of the field.

1389

Q. Is the Louisiana Gas Corporation controlled by the four producers? A. To the best of my knowledge it is not.

Q. What will Louisiana Gas Corporation obtain as a result of its participation in the whole project? A. Well, in this particular transfer, Louisiana Gas Corporation will obtain nothing.

Q. As I understand your testimony, you said that to your knowledge the corporation is not controlled by the producers and it is not controlled by Texas Eastern and yet it exists for no benefit that can be derived by its existence? A. That is correct. To the best of my knowledge, Louisiana Gas Corporation in this particular transfer here exists for the purpose of making it possible to put these properties in Texas Eastern hands under conditions that Texas Eastern thought gave it and again in turn people that it does business with the proper protection.

Presiding Examiner: When you speak of the proper protection, you are talking about protection against liability for what?

The Witness: Mr. Examiner, there are a number of factors that are involved. I woud say primarily the transfer was set up this way with the idea of what the lawyers call the catastrophic situation in mind. If the unmanageable thing were to happen and the gas weren't there to be used in

1390

Texas Eastern's requirements, with this arrangement, with no liability on these obligations, it would be possible for Texas Eastern to walk away from the property.

Presiding Examiner: Well, Texas Eastern, however, having walked away from the property would leave behind them some twelve million dollars, is that correct?

The Witness: If this catastrophe happened immediately, yes.

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Presiding Examiner: In other words, the remainder of the 121,975,200 might be avoided as far as Texas Eastern was concerned if for some reason or other the gas wasn't available? Is that what you mean?

The Witness: That was one of the factors that we had in mind in arranging the transfer in this manner.

* * * * * * * * * * *

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Mr. Deakins: Mr. John Guyton.

Mr. Examiner, did you admit exhibit M-14?

Presiding Examiner: I don't know whether I did.

I think I did.

Mr. Deakins: I think you did.

Presiding Examiner: If not, I will.

Mr. Deakins: All right, sir. Thank you.

(The document referred to, heretofore marked for identification as Exhibit No. M-14, was received in evidence.)

Whereupon,

John T. Guyton

was called as a witness and, after being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Deakins:

Q. State your name please, sir.

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A. John T. Guyton.

Q. Where do you reside, Mr. Guyton? A. Shreveport, Louisiana.

Q. And what is your business? A. I am a lawyer.

Q. Please state your educational background insofar as it pertains to the practice of your profession. A. I was educated at Louisiana State University and received an LL.B degree in 1928 and was admitted to the bar in Louisiana in November of that year.

Since that time I have practiced law in Shreveport, having been in the legal department of the Standard Oil Company of Louisiana for approximately two years with the firm of Wilkinson, Lewis, and Wilkinson, of Shreveport.

From 1931 until 1942, after three years in the Navy, I returned to Shreveport and was employed by Union Producing Company.

Presiding Examiner: Let me ask you one question just to orient myself.

Wilkinson, Lewis, and Wilkinson—is that a group who have frequently acted as attornies for United?

The Witness: That is correct, Mr. Examiner.

Mr. Deakins: United Gas Pipeline?

Presiding Examiner: Yes, United Gas Pipeline.

The Witness: Was employed by Union Producing Company as

their general attorney for approximately two years and then returned to private practice and formed the law firm with the other partners of Hargrove, Guyton, VanHook, and Hargrove in 1948 and have continued as a member of that firm up until the present time, the firm name now being Hargrove, Guyton, and VanHook.

By Mr. Deakins:

Q. Mr. Guyton, are you the member of any legal societies? A. I belong to the Shreveport, the Louisiana State, and the American Bar Association. At the present time I am the chairman of the mineral section of the Louisiana State Bar

Association. I belong to the mineral section of the American Bar Association.

Q. Have you specialized in any phase of the practice of law during the times since you were first admitted? A. Since I was first admitted to the bar, practically all of my practice has been in the oil and gas business.

Q. Now, Mr. Guyton, has your firm been employed to examine the leases and the titles, or both, to the Rayne Field leases? A. Yes. We have examined the leases and the titles to these Rayne Field leases.

Q. Was your firm performing that service at the request of Texas Eastern? A. That is correct.

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Q. Now, has your firm given Texas Eastern an opinion under date of February 3, 1959? A. We have.

Q. Do you have a copy of what has been marked for identification as Exhibit M-11 in your possession? A. Yes, I do.

Q. Will you state what that is, Mr. Guyton?

Mr. Huntsman: I object to it, Mr. Examiner. It is not the best evidence. It states itself what it is.

Presiding Examiner: I think the witness can repeat that.

Mr. Deakins: I want him to state what it is so it can be identified.

By Mr. Deakins:

Q. State what it is. A. It is an opinion of my law firm addressed to Texas Eastern concerning leasehold interests in the Rayne Field.

Q. I notice the signature Elmon W. Holmes, appears at the bottom. State who Mr. Holmes is. A. He is a member of our firm.

Q. Is that your firm opinion insofar as it pertains to the matters expressed therein? A. Yes, it is. Mr. Holmes discussed the opinion with me before it was written and de-

livered. It is our firm opinion.

Q. Now, in your opinion, that is a correct opinion? A. It is correct, yes.

1400

Q. Now, Mr. Guyton, do you have in your possession what has been marked as hearing Exhibit No. 14 about which Mr. Jacobs testified? A. Yes, I have.

Q. Did you hear Mr. Jacobs testify insofar as it pertained to the portent of those agreements? A. I did.

Q. Have you examined those agreements yourself? A. Yes, I have.

Q. Tell me this, Mr. Guyton:

If the agreements are executed and the conditions met, in your opinion will the title to the leases in the Rayne Field be conveyed to Texas Eastern from the present lease owners? A. It is my opinion that title will be conveyed to Texas Eastern.

Q. And did you notice that a consideration therefore was stated in the agreement? A. Yes, I did.

Q. In the lease purchase agreement? A. That is correct.

Mr. Deakins: That is all.

You may have the witness.

Presiding Examiner: Does anyone have any preliminary questions before we recess?

Now may I inquire of counsel whether they want to take the

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witnesses in the order in which they previously appeared here on cross-examination?

Mr. Deakins: Mr. Examiner, it would be convenient to us if the other counsel could take Mr. Guyton and Mr. Olsen. They are not Texas Eastern employees and possibly would both like to get back.

I know Mr. Olsen is busy, and I know Mr. Guyton is usually busy. He nods he would like to get out as soon as he can.

Mr. Huntsman: I have no objection. I think that would be a proper accommodation.

Mr. Deakins: Thank you, sir.

Presiding Examiner: Which one do you want to take first?

Mr. Huntsman: I would just as leave take Mr. Guyton.

Presiding Examiner: All right.

I think we will take a 10-minute recess first before we have Mr, Guyton's cross-examination.

(At this point, 3:15 p.m., a recess was taken until 3:25 p.m.)

1402

Presiding Examiner: All right. The hearing will be in order. All right, you may proceed.

CROSS-EXAMINATION

By Mr. Huntsman:

Q. Mr. Guyton, in your experience in the practice of law, down there in Louisiana, did it ever require you to write a title opinion upon the subject of leases? Of gas and oil leases? A. Yes, sir. I have written numerous opinions going to the title of oil and gas leases.

Q. What is an oil and gas lease? A. Well, an oil and gas lease conveys the right from the owner of the land or the owner of minerals to the leassee to go upon the property and to protect the property for oil and gas by the drilling of wells in search of oil and gas, to produce oil and gas and other minerals, if called for in the lease, reduce those minerals to possession by putting it in tanks, or liquids, in pipelines, the gas, and to own those products when produced

and reduced to possession, subject to the payment of such royalties as may be called for in the lease.

Q. In other words, the gas and oil lease is a contract between the land-owner and the lessee with respect to the capture and disposition of oil or gas that might be found by exploration under his land?

1403

A. Basically, that is correct.

Q. Do you have any knowledge of any change of law in the State of Louisiana in recent years? A. Yes.

Q. Regarding that? A. By recent years, however, do you want me to go back?

Q. Oh, let's go back to 1935. A. Well, I take it you have reference to the Glassell Decision, Gulf Refining Company versus Glassell, which involved the right of the lessee to assert its possession of the leased premises. And, in that particular case, the Supreme Court held that the lessee did not have that right, but had to assert a possession through the lessor. As a consequence, the legislature passed an Act, as I remember it was in 1938, in which, in effect, the legislature said that the lessee did have a right to protect his possession, and that was a real right. And that got before the Supreme Court. And the Supreme Court said, in several cases, that the effect of this legislation was procedural from the standpoint of the lessee's having the right to come into court, but that it did not change the basic character of the lessee's rights. I have in mind a suit involving a partition, in which it was contended that by reason of that legislation in 1938, that the oil and gas lessee was a proper party to enact for partition, and the court held it was not—that the gain had to rely upon the lessor. Subsequently, we have had other

1404

legislation which says that an oil and gas lessee should be made a party.

Q. When was that? A. I don't remember the exact date. It has been within the last 10 or 12 years, as I recall it.

Now, we have also had some additional changes in this sense. We had a case of Arnold versus Sun Oil Company, which was decided in the late '40's, I think.

In that case, the Supreme Court held that an oil and gas lessee was not entitled to the protection of the public registry laws of the State of Louisiana, and that the oil and gas lessee had to depend upon its lessor again. Now, here, again, we had legislation that was introduced and resulted in 1950, Special Sessions Act, I think it was Act 6. And I think it will be found in the revised statutes—I have that reference right here. In RS-91105. And there the legislature defined an oil and gas lease as being a real right, and I won't attempt to read that statute into the record, but it did determine that an oil and gas lessee was entitled to the protection of the registry laws of the State of Louisiana, and, further contained a provision in the statute, "This section shall be considered as substantive as well as procedural, so that the owners of oil, gas and other mineral leases and contracts within the purpose of this section shall have the benefit of all laws relating to the owners of real

rights in immovable property or real estate."

Presiding Examiner: How are those registered—as articles of agreement?

The Witness: They are registered in the conveyance records of the parishes.

Presiding Examiner: As articles of agreement?

The Witness: Simply registered as oil and gas leases.

Presiding Examiner: In other words, they have a separate classification for it.

The Witness: Some parishes have separate books in which they record oil and gas leases. Other parishes do not, and

simply record them along with other acts of conveyance, such as deeds and so forth. We have separate mortgage records and separate conveyance records. And if they are recorded in a separate book, called an oil and gas lease book, that book is nevertheless a part of the conveyance records, but simply is a separate record within those conveyance records.

By Mr. Huntsman:

Q. Do you have any knowledge as to what the recordation laws are in Acardia Parish, Louisiana? A. Specifically, no. I don't know whether they have an oil and gas record book or not. But to my way of thinking it won't make any difference, because they are all part of the conveyance records.

Q. These leases that you have examined, did they bear any

endorsement upon them showing that they had been recorded in the county or parish recorder's office? A. Mr. Huntsman, I didn't examine them personally. My firm examined them—two members of my firm—Mr. E. C. Hickman and Mr. Elmon Holman. And I am satisfied that they either examined certified copies or copies contained in the abstracts that were furnished.

Q. Are those men members of the Bar of the State of Louisiana? A. Yes, sir, they are, members of my firm.

Q. I see. But you never examined them? A. No, sir, I did not personally examine these leases.

Q. You have no personal knowledge of any of these leases that are the subject matter of contract between these companies? A. No, sir. But I think I may rely upon the findings of my partners in that respect.

Q. Let me ask you, Mr. Guyton—if a lease was handed to you that bore the provisions in it that nullified any warranty or representation as to the title of any oil or

gas or any property rights, would you say that that was a lease or a deed? Would that be a deed of any kind or description, conveyance? A. I am afraid I don't understand your question.

1407

Presiding Examiner: Would you read the question back?

(The question, as recorded, was read by the reporter.)

The Witness: As I understand your question, Mr. Huntsman, you are asking me if a lease had warranty limited, or stipulated there was no warranty, whether or not that would still be a valid lease. And my opinion is that it would still be a valid oil and gas lease.

By Mr. Huntsman:

Q. It would not be a conveyance? A. Well, I would say it is an oil and gas lease. The effect of it is a conveyance of the rights that are transferred under the lease. And as I said earlier, those rights are the rights to go upon the property and prospect for oil and gas and to reduce it to possession and ownership

Q. Now, is there any provision in the laws of the State of Louisiana that would enable an assignee of a lease, oil and gas lease, to turn around and convey and warrant title to something that he had received by such a lease? A. As I understand your question, under such a lease, which contained a limitation of warranty, or a stipulation of no warranty—could that lessee in turn convey the property by warranty, deed or assignment, and my answer is yes, he could.

Q. Well, what would the grantee get from such a warranty?

1408

A. He would get the benefits of the warranty that came from his grantor.

(1408)

Q. He wouldn t get any benefits from the original land owner, would he? A. No, sir, he would not—insofar as the warranty is concerned, no.

Q. That is right. Insofar as the warranty is concerned, it wouldn't amount to anything. A. Well, I won't agree with that—that it wouldn't amount to anything. The grantor in that case might be the Standard Oil Company of New Jersey, and I would say the warranty was very good.

Q. Yes. Suppose the grantor, though, didn't have a dime in its treasury, and he was bankrupt. Would the warranty do the grantee any good? A. Well, if the grantee couldn't recover on the basis of the warranty, I would say it wouldn't do him any good, no.

Mr. Deakins: Mr. Examiner, I have not objected, but I do not see the relevance of this.

Presiding Examiner: I don't think that that is a question of a lease at all, but it may be relevant to the question which you made some objection to, as to whether it was important who Louisiana Gas Company was and what assets they might have. I think it might be pertinent to that question, and I am going

1409

to permit the line of questioning on that grounds.

Mr. Deakins: As I said, Mr. Examiner,—I don't want to seem to be repetitious—but we are not asking for a certificate authorizing us to acquire these leases.

Presiding Examiner: I appreciate that fact. But you are asking for a certificate which assumes that you have gas subject tc your beck and call which can be transported through your line.

Mr. Deakins: That is right, Mr. Examiner. But I have been in lots of cases in which we had, for example, a contract, and all it did was to list on that the leases that are dedicated under that. Nobody every inquired as to whether

the owner of that lease had a nickel or not, because those are some things we just have to take on their face. It is like these questions about the warranty. They are meaningless.

Presiding Examiner: Well, we will see whether they are meaningless before we get to the end of it. I am not at all sure that it is or is not.

By Mr. Huntsman:

Q. If a lease or a contract to sell or transfer a lease by a lessee to a third person required that third person to secure permits or permission from any governmental agency to enable it to fulfill its obligations hereunder, the inability of that company—Louisiana Gas Company—to acquire, or the delays on the part of the Louisiana Gas Company in

acquiring at reasonable costs and after the exercise of reasonable diligence, such materials and supplies and permits, and permissions—if that were contained in a lease agreement in which a third party was buying from a lessee, would you say that as a matter of title, that the purchaser of the lease was getting—if he didn't conform with that condition imposed upon him by the seller, that he was getting anything from the seller? A. As I understand your question, if a conveyance contains a condition, whether or not the buyer will acquire any rights upon—without performance of that condition, my answer is that he would not, that the condition would have to be performed.

Q. That is right.

Did you have before you, when you or your firm rendered their opinion, the Exhibit M-14, which purports to be the lease sales agreement in the Rayne Field of Louisiana between Continental Oil Company and others and Louisiana Gas Company? A. Yes, sir, we examined that agreement—not in its present form. It has now been printed. But we

(1410)

examined a copy of the agreement, and I have read both the agreement originally submitted and this one, and noted they are the same.

Q. Do you know wherein the original that was filed and the printed copy differ?

1411

A. I don't think they differ in any material respect, Mr. Huntsman.

Q. I see. Let me ask you—under the laws of Louisiana, what are the rules, or what principles are required with respect to assignment of a contract? That is to say, can an obligee, under a contract, assign the benefits of the contract without the burdens and obligations thereunder? A. Yes, sir. I think so. Certainly the burdens would follow insofar as real property is concerned that attach to the property and attached in the original conveyance as part of the conveyance. But there, of course, could be certain provisions of such a contract, such as the obligation to pay the consideration, which would not pass on to the subsequent asignee unless he assumed an obligation. The property, of course, would stand for the payment of the consideration under those circumstances.

Q. The doctrine of assignment as obtains under the common law is practically the same as that under the civil law in Louisiana? A. I can't answer that, Mr. Huntsman.

Q. You haven't made a study as to the relationship of that particular field? A. No, sir, I have not.

Q. I see.

1412

Are you familiar with the case of the United States against the NEBO Oil Company, Inc., decided by the U.S. Court of Appeals of the Fifth Circuit on August 4, 1951? A. Yes, sir, I am.

Q. And would you say that the statute has changed any of the rules in that case since that time? A. As I recall that case, that involved a mineral servitude. And I think that what the court said in that case, if I remember correctly, was that they were not two estates, one in minerals and one non-mineral estate.

Q. That is right. A. No, I would say that has not changed. The law of Louisiana does not recognize the ownership of minerals in place.

Q. That is right. And the law hasn't been changed since this court announced that that was the rule in Louisiana, as far as you know? A. I think that is correct.

Q. Now, explain, Mr. Guyton, the significance of the term "tenure" in the law of Louisiana as it relates to leases, and the term "servitude." What do those two terms mean in a lease? A. Well, I will take the first one first. The term servitude has no relation to an oil and gas lease because that term is applied to the sale of minerals themselves. Now,

the difference between the mineral sale in an oil and gas lease, and an oil and gas lease basically is that in the one case, the case of a mineral sale, the purchaser purchases more or less as an investment. He pay normally—and I would say practically in all cases—a cash consideration, and has no further obligations insofar as the grantor of those minerals are concerned.

The situation is entirely different with an oil and gas lease in that ofttimes the cash consideration, or bonus, is small compared to the hope of royalty, you might say, that the lessor seeks under the lease. And if the lease contains no actual obligation for development, there is an implied obligation for development. So that an oil and gas lease has certain obligations which a mineral owner does not have. And they are two different things.

(1413)

Now, a mineral sale in Louisiana is a servitude. An oil and gas lease is a lease.

Q. Let met ask you a hypothetical question to illustrate a point.

If—— A. I didn't fully answer your question—if you want to interrupt me. You asked me about tenure.

Q. Go ahead. A. I take it you are talking in terms of the term of an oil and gas lease, which, generally, is a specified term of

1414

years, and as long thereafter as oil and gas is produced. Now, such a type lease has been recognized in many cases in Louisiana, and the courts have held—I have forgotten the name of the case, but they have held that there is no uncertainty about the term of such a lease, that it is a known fact that oil and gas reservoirs do not produce forever, and are subject to depletion, and, therefore, the term of the lease would eventually come to an end, the lease would not be for an indefinite time.

1415

Q. And when it comes to forefeiture of the rights of a lessee of an oil and gas lease, if you were handed a question as to whether or not a lease was good after ten years, when there had been no production or sale of gas from a piece of property, would you say that you could determine upon that state of facts whether the owner of the land could forfeit or take possession of the land and drill on that, regardless of the lease? A. Well, I would say, Mr. Huntsman, that it would depend upon the term of the lease. There is no prohibition in Louisiana as to the number of years that an oil and gas lease may have within its primary term. For example, a lease may be granted for 25 years as a primary term, as long as oil and gas was produced.

At one time we had a lot of difficulty with the ten-year

limitation, and a number of the early cases classified an oil and gas lease as a servitude.

As a matter of fact, there is one early case of Arent versus Hunter, in which the court held that a non-contiguous portion of a lease would terminate after ten years, and applied the doctrine of servitude in that case. But that no longer prevails in Louisiana. And as a matter of fact, in the Gulf Refining Company vesus Glassell case that you mentioned earlier, the Supreme Court specifically determined that an oil and gas lease was not a servitude.

Q. When they——

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A. Just let me add one further thing to answer your question. If such a lease were presented to me that had been in existence for ten years, and no oil and gas produced, I would have to know a number of other things before deciding on the rights of the landowner. I would have to know, of course, the term of the lease. I would have to know whether any part of that land had been pooled with other land from which there was production.

Q. By pooled—— A. Unitized, either by voluntary agreement under the term of the lease, or by order of the Conservation Commission.

Q. The Conservation Commission has jurisdiction in matters of that kind when certain conditions prevail, is that not true? A. That is correct. The Conservation Commission has the right to determine the spacing pattern and where there are different owners in a tract that constitutes the spacing pattern for one well, such as 640 acres in the case of a gas well, the Conservation Commission has the authority to unitize all those various tracts and ownership into one unit for one well to produce the gas for all the owners.

Now, you might have half-a-dozen leases in that particular unit that were ten or twenty years old, and still may be

in full force and effect by reason of production from other lands.

Q. If you represented a client who was going to purchase

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a lease that another person had taken from the land owner, for oil and gas lease purposes, what would you do in regard to the instrument that evidenced that lease? A. I do not understand what you have in mind when you ask what I would do with it, the instrument that evidenced the lease.

Q. Would you require the person who was assigning it to you to turn it over to you, so you would have it in your possession? A. Well, of course we record the original instruments in Louisiana, so that would not be possible. The original lease would be of record. And all he could do would be to execute an assignment of that lease, and that assignment would be recorded. But the original instrument is retained by the clerk of the court.

Q. I see—sort of put in a folio, is it, there? A. Well, it is actually recorded in a book, a typewritten record at the present time, of all instruments, and they also keep them, the original instruments, in the files.

Q. Is it a custom in the business of dealing in oil and gas leases to make copies of those so that the parties to the lease will have copies and the original be on file? A. Sometimes that is done. Sometimes the lease is executed in multiple originals, though not often, because we feel that the record and the location of the original lease in the courthouse, usually in fire-proof vaults, is sufficient

1418

protection, probably better than in the owner of the lease's files.

Q. Would you think it would be unusual business for people engaged in the purchase of leases that cost $134

million to not have copies of those leases in their possession? A. Nothing unusual about that at all.

Q. There is not? A. No, sir. You meant copies of the original leases, I take it.

Q. Yes. A. Nothing unusual about that at all. If they have got copies in an abstract, or copies certified by the clerk of the court, simple typewritten out, transactions involving multi-million dollars are handled on that basis.

Q. But they have got copies of them. A. Copies, yes—but not of the originals.

Q. Not duplicate originals. A. No.

Q. What I mean is any copy that was authentic, contained all of the terms and conditions. A. Surely, they would have examined copies of the leases, and that has been done here.

Q. So that you know that the Texas Eastern Company has copies of these leases. A. Well, they were submitted to our members of our firm

for examination. Now, whether or not Texas Eastern has actually obtained the copies and put them in their files, I have no knowledge. But I do know that the members of our firm have examined copies of these leases.

Mr. Huntsman: I think that is all.

Presiding Examiner: All right. Does anyone else have any questions of this witness?

Mr. Smith: I have one or two, Mr. Examiner.

Presiding Examiner: All right, Mr. Smith.

By Mr. Smith:

Q. Mr. Guyton, Exhibit 11 indicates that you examined the lease sale agreement, the assignment and conveyance, and the lease purchase agreement that are mentioned in Exhibit 11. A. Yes, sir.

Q. Did you examine any other instruments evidencing agreements involving this Rayne Field transaction be-

tween or among the independent producers, Louisiana Gas Corporation, and or Texas Eastern? A. Mr. Smith, I did not, and as far as I know, no member of my firm did examine such instruments.

Q. You did examine the lease sale agreement, did you not? A. Yes, we did.

Q. And you noticed in that agreement that it referred to the acts of mortgage and pledge instrument. A. I did notice that.

1420.

Q. Did you examine the acts of mortgage and pledge instrument? A. I did not.

Q. So you do not know whether or not or to what extent that would affect title. A. I do not. I have not seen such an instrument.

Q. Mr. Guyton, did you or your firm have anything to do with the creation of Louisiana Gas Corporation? A. Nothing whatsoever, no.

Mr. Smith: That is all I have, Mr. Examiner.

Mr. Huntsman: I would like to ask one more question.

Presiding Examiner: All right. Don't take too many bites of the cherry. I will stop you sometime, you know.

By Mr. Huntsman:

Q. You stated that you represented the Union Producing Company. A. And still do, yes, sir.

Q. And that is a wholly-owned subsidiary of the United Gas Pipeline Company. A. No, sir, that is a wholly-owned subsidiary of United Gas Corporation.

Q. United Gas Corporation. A. That is correct.

Q. Now, does this United Gas Corporation have any contract with the Sun Oil Company for any gas from the Rayne Field

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that you know of? A. I do not have any idea, but I would think not. I have not heard of any—let's put it that way.

Mr. Huntsman: That is all.

Presiding Examiner: Anyone else?

Mr. De Vore: I have a question.

By Mr. De Vore:

Q. Mr. Guyton, I believe you stated in answer to a question of Mr. Huntsman that ordinarily in a gas lease terms for payment consist of a small initial cash payment, and then royalties or amounts paid upon the production of gas as that lease is developed, Is that correct? A. I did not mean to leave the impression that it was necessarily small. Sometimes it is large. But in many cases it is small in relation to the eventual returns from royalties.

Q. Well, aside from the size of the down payment, was my understanding correct that the balance is paid in connection with the amount of gas which is produced from the lease? A. Well, it is not a balance in the sense that you speak of—at least I do not understand it to be. In other words, it is an obligation of the lessee to pay a royalty which is dependent upon the amount of the production from the property. That royalty varies from an eighth to in some cases as much as a fourth, in South Louisiana, and maybe larger royalties.

Q. But the payment of a royalty is, would you say, the

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ordinary method of payment for gas obtained under a gas lease? A. To the lessor, yes—the payment of the royalty is his compensation for the lease in addition to the cash bonus which the lessor may have received.

Q. In view of that, would you say that the terms for payment, the terms of payment for the gas leases which Texas Eastern is acquiring is the ordinary type of payment for a

gas lease? A. I will answer that this way. The members of my firm who examined these leases determined that the leases were all on what we call commercial oil and gas lease forms, and a commercial oil and gas lease form would require the payment of a stipulated royalty on oil and gas. And the printed commercial forms, of course, contain a provision for a one-eighth royalty. If the royalty is in excess of that, it usually is by negotiated agreement and a typewritten contracts.

Q. Well, if I understand the contracts that have been submitted, and the testimony, Texas Eastern is proposing to pay initially some $12 million, and a balance of $121 million for the working interest of gas involved in the Rayne Field —this aside from the minority interest which they are also purchasing for another consideration of some $46 million.

Mr. Deakins: Mr. Examiner, I object to that question. It is not proper. It does not reflect the testimony. The testimony is that this payment is for the leases, not the working

interest gas, as he stated. He stated it incorrectly.

Mr. DeVore: I will accept the——

Presiding Examiner: All right—will you correct that.

By Mr. DeVore:

Q. But in any event, that payment is required to be made regardless of the amount of gas which is obtained from the lease, isn't that correct? A. The royalty payment to the original lessor?

Q. Well—— A. Are we talking about the original leases or something else?

Presiding Examiner: I thought you were talking about this lease sale agreement.

Mr. DeVore: That is what I am talking about. As I understand it, there is a payment for the gas leases representing

the working gas interests of $134 million, $12 million of which is supposed to be paid initially and the balance over a perod of 16 years. The balance is not in any way related to the amount of gas which will be developed from the leases.

The Witness: That is as I understand the agreements—that it is not related to the amount of gas which will be produced from the leases.

Presiding Examiner: And you would not classify this in any way as an overriding royalty, then.

The Witness: No, sir. I classify the $134 million as

the consideration for the purchase of these leases.

Presiding Examiner: In other words, consideration for the assignment.

The Witness: For the assignment, for the purchase of the leases, yes, sir.

By Mr. DeVore:

Q. In other words, Texas Eastern is not proposing to pay any royalties for the gas which it subsequently acquires from the leases? A. Mr. DeVore, as far as this gas production is concerned, royalties will have to be paid with respect to that production. But those are the royalties that have been reserved by the lessors or by any intermediate transfer of these leases prior to the time that the title has reached Texas Eastern. But those royalties will have to be paid.

Presiding Examiner: But there will be no royalties paid to any of the four companies, and you anticipate that there will be no royalties paid to any of the other people holding the balance of the field if similar agreements are made with them.

The Witness: As to the gas, that is correct.

(1424)

By Mr. DeVore:

Q. Well, then, are the provisions of payment for the gas leases the typical kind of payment for a gas lease? A. Well, I cannot answer that as to whether or not it is

1425

typical. Let us say this—it is not an unusual agreement, insofar as the consideration is concerned. Ofttimes leases are transferred on the basis of a payment of large considerations, and I see nothing particularly unusual in this consideration, except that Texas Eastern—well, nothing unusual in it. They have agreed to pay to their assignor, the Louisiana Gas Company, $12 million, and Louisiana Gas Company, in turn, has agreed to pay $134 million for the property.

Presiding Examiner: May I interrupt you again, Mr. DeVore.

Mr. DeVore: Yes, sir.

Presiding Examiner: I want to pick up one thing that was in the witness's answer there, I believe, or else in your question. And it was in regard to there was no royalty payments for the gas.

As I understand—am I correct in my understanding of these instruments that there is a reservation of all of the net interest after cost of production in so far as it relates to oil, and in so far as it relates to the hydrocarbons over and above the normal approximately 1,000 or whatever is provided for in the agreement—I did not check that—BTU; that is reserved entirely after expenses to the assignors here, is that correct?

The Witness: Basically that is correct. You referred to oil, and I am sure you meant condensate, because all of the oil is reserved by the sellers.

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Presiding Examiner: I had in mind condensate as well as oil, and in addition the hydrocarbons produced either at plant or on the lease.

The Witness: The liquids, yes. In other words, there are certain——

Presiding Examiner: In other words, any gasoline or butane or methane which was taken out to bring it down to approximately one thousand would also, the net value of it, be paid over to Sun and Marr and Continental and General Crude.

The Witness: I think basically that is correct. The agreement sets up the manner in which those payments are to be calculated on the gasoline. There are certain expenses to be deducted from the condensate as set forth in the agreement.

Presiding Examiner: All right.

By Mr. DeVore:

Q. Mr. Guyton, all I was trying to ascertain was whether or not the method of payment that is involved in the acquisition of these gas leases was different from the ordinary method of payment which you had described as common in the acquisition of gas leases, where an initial payment is made, and then subsequently royalties are paid in connection with the amount of gas produced.

Mr. Deakins: That is objected to as repetitious. The question has already been asked and answered.

Mr. DeVore: I do not think I have had an answer.

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Presiding Examiner: I think we will let the witness answer. He wants to.

The Witness: Mr. DeVore, I think probably where the confusion is that I thought you were talking about oil and

gas lease contracts between the lessor and the lessee, where it is normal for a cash consideration to be paid, be it small or large, and in addition a royalty to be paid.

It is not customary or required that in the assignment or sale of the leases after they have been developed on a producing basis that a royalty be stipulated in favor of the seller. Sometimes that is done in the nature of an overriding royalty, sometimes a production payment. Oftimes a sale is made simply on the basis of a cash consideration.

Mr. DeVore: I have no further questions.

Presiding Examiner: Does anyone else have any questions?

Mr. Mann: I would just like to ask one or two.

Presiding Examiner: All right.

By Mr. Mann:

Q. Mr. Guyton, lead me through this thing by the hand, if you will. There have been a lot of royalty owners involved; in the first instance, let us say, with Continental—with respect to Continental's leases there were, let us say, dozens, maybe hundreds, even thousands of royalty owners who would, if Continental had developed these leases, be entitled to royalties, presumably.

1428

What happens to those royalty owners now? A. Those royalty owners——

Q. I am speaking about the gas now. A. Those royalty owners are still entitled to receive their royalty. We are talking about now the land owners and the original mineral owners, who granted the original oil and gas leases. They are entitled to receive such royalties as they reserved in their oil and gas leases.

Q. So that in terms of the mechanics, once this project is in operation, how do they get their money? Who pays who and how does it work? A. Well, I would say that Texas

Eastern, as the owner of the gas, would pay the royalties that were due, since it is not required to account to anyone else for that gas—Texas Eastern would be required to pay those royalties.

Now, bear in mind that the commercial oil and gas lease does not provide for the delivery of any gas in kind to the lessor, as that is an impractical situation and cannot be accomplished as in the case with oil, where the leases, most of them, do provide that the royalty in oil can be delivered in kind if the lessor requires it.

So that Texas Eastern will be required to make payment of these lessors' royalties.

Q. You may not know the answer to this one—perhaps counsel could state it—but is it contemplated that Texas

Eastern would pay to Louisiana Gas Corporation and Louisiana Gas Corporation back to the several major producing companies, and they in turn to the royalty owners, or how is it going to be handled? A. I do not know how it would be handled. But I would say it would not be handled in that way. I imagine that Texas Eastern would make the royalty payments direct to the royalty owners who will become Texas Eastern's lessors by reason of these transactions.

Mr. Deakins: That is correct.

Mr. Mann: That is all I have—thank you.

Presiding Examiner: All right. Anyone else have any question of the witness? Do you have any redirect?

Mr. Deakins: I do not, Mr. Examiner.

Presiding Examiner: All right. The witness is excused.

Mr. Deakins: The witness is excused so he can go home.

Presiding Examiner: The witness is excused sine die.

(Witness excused)

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1617

John C. Jacobs

resumed the stand and testified further as follows:

. . . . . .

1621

Further Direct Examination

By Mr. Deakins:

Q. You are the same John Jacobs who testified previously in these proceedings, are you not, Mr. Jacobs? A. I am.

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Q. Now, I want to ask you on further direct some questions that are historical insofar as they deal with the events leading up to and the consummation of the arrangements which we have presented in these reopened hearings.

First, I will ask you, Mr. Jacobs, to state the facts which you know about the commencement of negotiations and the negotiations which led up to the acquisition of—led up to the consummation of the arrangements for the acquisition of the Rayne leases.

Will you state that to the best of your knowledge and your recollection? A. Yes, I will.

To begin with, Texas Eastern for a long period of time has been and continues to be interested in the acquisition of gas supply through obtaining developed leases, as compared with obtaining gas through the normal type gas purchase contract.

Now, the acquisition of gas supply through leases has two principal advantages. The first advantage is that it gives Texas Eastern or the buyer, the purchaser, flexibility in the amounts of gas that can be taken from the wells as compared with an ordinary gas purchase contract which has the so-called take or pay for feature in it, which is that feature that provides that the pipeline company will pay for a certain amount of gas each year, whether it takes it or not.

1623

Q. Let me interrupt you, Mr. Jacobs.

In that connection, you have in your office in Houston the custody of the contracts which Texas Eastern has made or which have been assigned to it by Wilcox Trend of all the gas purchase contracts, do you not? A. That is right.

Q. Can you state without detailing it, whether or not a good number or most of these contracts or a few of them contain these provisions that require you to either take gas or pay for it, whether taken or not? A. Mr. Deakins, we have something in the neighborhood of 250 contracts and practically all of those have the take or pay for feature in them, the exceptions being some contracts which would have to do with casinghead gas and you do not escape the problem there, because the casinghead gas has to be taken into the pipeline as the oil is produced.

Presiding Examiner: In other words, that is something that the state commission takes care of and sees that you take, is that it?

The Witness: The state commission sets the oil allowables and in a casinghead contract provides that the buyer

will take the goods as produced. So it is really controlled by the state commission, yes, sir.

Presiding Examiner: Thank you.

1624

By Mr. Deakins:

Q. Now, let me ask this, Mr. Jacobs: In your experience have there been occasions when Texas Eastern was required to pay for considerable quantities of gas which it could not take due to slack demands on the system?

Mr. Huntsman: Objection to the question as immaterial to the issues in this case.

Mr. Deakins: Mr. Examiner, he has stated that one of the advantages was that and I wanted to show——

Presiding Examiner: I think I will allow him to show.

Mr. Deakins: It is not a thing that is inconsequential.

Presiding Examiner: We are probing some disadvantages of this proposal. I think we are entitled also to consider any alleged advantages.

By Mr. Deakins:

Q. Do you remember the question, Mr. Jacobs? A. I do.

I do not know of any specific instances in which Texas Eastern has had to pay money for gas that was not taken, but I do know of instances where it has been necessary for us to go to the seller under a gas purchase contract where it was apparent that Texas Eastern would not be able to move the minimum mount of gas required under the contract and make arrangements so that the contract would be changed to the extent that Texas Eastern would not have to pay those amounts

of money.

Q. All right. Now, then, proceed with your discussion of the historical events that you were discussing just before I interrupted you. A. I would like to say one more thing about the take or pay for contract if I may, and that is the problem that it presents to the pipeline company can perhaps be best expressed this way, and that is that the take or pay for contract with imposed upon it the regulation of the Natural Gas Act results in effect in 100 per cent load factor requirements on the pipeline at the supply end. There are very few pipelines that at their sales end sell at 100 per cent load factor. Consequently, the take or pay for problem is a problem that is continuously with us in the operation of our system.

Now, another advantage that comes out of the acquisition of gas supply through the purchase of leases lies in the aspect of fixed price.

I would like to make it plain that what is being discussed here is the acquisition of developed leases and not the taking of leases for exploration purposes.

It is a fairly common thing, I am sure we are acquainted with it, and Mr. Guyton testified about it here before, where a lease or a landowner, gives a lease on property that may or may not have gas underneath it to a person for a bonus and royalty.

Now, it is another matter, albeit a fairly common transaction in the oil and gas industry—it is another matter, many other considerations come into the matter when a transfer of proved productive leases is involved.

What I am discussing here is the transfer of proved productive leases.

Back to the point I had raised that one of the advantages of acquiring a gas supply in this manner is that the price of the gas is fixed. We are all aware that in the gas purchase contract, in the price provisions, there is usually included the so-called indeterminate pricing provisions, in particular the favored nation's clause and the price redetermination clause. These provisions are included due to the fact that these contracts are made for 20 years and are included to protect the seller, if you will, against future increases and price levels as, for example, inflation.

Now, by acquiring leases as we have acquired them here, there are no indeterminate pricing clauses involved. If you will remember, I testified before that there are three principal considerations that flow to the sellers in an acquisition of leases such as we have under discussion here.

First, a cash down payment. Second, a series of notes which mature over a part of the life of the property. Thirdly, a production payment out of the liquids.

Now, I might pause here and define what is meant by a

production payment.

Q. Just a minute. Let me interrupt you. Is provision made for production payment in any of the documents which you testified to previously which will be effectuated in a consummation of these arrangements?

Mr. Huntsman: Objection to it as not the best evidence, no proper foundation.

Presiding Examiner: He can point out which documents

it is in, if it is in any of them, and that is all I understand this question goes to.

Mr. Huntsman: We are entitled to see these documents and examine those.

Presiding Examiner: I understood the documents he was talking about were the documents in evidence.

Mr. Deakins: Yes, sir.

The Witness: The provisions in regard to the production payment in this particular subject——

By Mr. Deakins:

Q. In the Rayne Field documents? A. —in the documents relative to the transfer of leases in Rayne Field from the Texas Eastern is contained in Roman I to hearing Exhibit No. M-14 which is entitled "Lease Sale Agreement."

On page 3 of the Assignment and Conveyance, which is attached to said Lease Sale Agreement, is a description of the

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production payment which is involved in this particular matter.

Now, first, as to what a production payment is: Again, in selling—buying and selling—proved leases, the oil industry has developed the production payment. Basically, it is either a type of security or a type of retained interest.

We see it often used in connection with loans of money against approved properties. The loan is made to be repaid out of the hydrocarbons produced from the property when and as produced.

Now, the significant thing about this type of security is the only rights of the lender are against the hydrocarbons as produced. It is not a production payment if the borrower has also assumed responsibility to repay the loan outside of the production.

(1628)

Now, in our particular case the production payment has been retained by the present owners of the leases.

As you will notice, and this is where we started when we start talking about production payments, we are talking fixed price. We wanted to make this deal so there would be coverage in the future as to the operating expenses. Obviously, as the owner of the leases, Texas Eastern has the obligation to develop hydrocarbons, and this field is essentially completely developed, has the obligation to produce hydrocarbons, and has the obligation to market hydrocarbons. These are the obligations that fall on any person that owns leases.

Q. Now, Mr. Jacobs, where do those obligations arise?

1629

A. Those obligations arise in the lease instrument itself. These obligations arose when the present owners of the leases first took their leases from the lessor or landowner back at the time when it was not know whether there were hydrocarbons under these leases or not. Those leases were taken, and when they were taken they contained these obligations, basically, to develop, to produce and to market. The development phase has been completed. As has been testified here, these leases are some of the most valuable ones in the State of Louisiana.

Q. Let me ask you this: What happens if the lessee fails to market, produce, or develop the lease, and do you know whether or not there has been many times in the courts cases involving the failure to do any of those things and what has been the effect of those where proof of a failure was shown conclusively.

Mr. Huntsman: Objection to the question upon the grounds that no proper foundation has been laid for the conclusion of this witness upon this subject. It is purely a legal matter. The documents are not before you nor before

us. We haven't seen them. It is assuming facts not on the record.

Presiding Examiner: I think the question is general and I think the witness' background is sufficient to justify it. It doesn't apply to particular documents in this case.

Mr. Deakins: I didn't intend it to, Mr. Examiner.

1630

A. If those obligations are not met by the owner of the lease, the lessee or the assignee of the leasee, the person that owns what is called the working interest, then the lease is subject to termination.

Now, we might go a step further and say that in the development of the oil and gas industry and the concept of the terminable lease was developed years ago and is the standard type of lease that is used in this country throughout the industry. Any of these large companies—take a company like the Texas Company, with large investments in leases, proved leases, if they were to cease to carry out any of those three responsibilities, their leases, regardless of the value of them, would be subject to termination.

Presiding Examiner: That has been the protection that the lessor has had since the early days of the oil industry in America.

The Witness: That is correct, Mr. Examiner, and it is a protection to the leasee because in developing the terminable lease, the lessee wanted it that way, so that if the property were valueless, he could terminate the lease and give it back to the lessor. If the property were valuable, he could meet his obligations under the lease and maintain his interest in it.

Presiding Examiner: And, of course, in areas where the lease was definitely an interest in real estate, there would be

1631

no question that it might include the title too, if there wasn't a way of having in the recorded instrument this means of cancellation. Is that correct?

The Witness: That is correct. And the subject of the clearance of the record, so that title will be good, is of concern in the State of Louisiana, too.

One of the cases that Mr. Huntsman spoke of, the Nebo Oil Company case was involved in making sure that the records were clear, the title was in the oil company.

By Mr. Deakins:

Q. Is this obligation sometimes complied—have the courts so construed it to be an implied obligation, if not expressed in the lease and is that uniform?

Mr. Smith: I object to that question.

Presiding Examiner: I think that is a question for briefing.

Mr. Deakins: Yes, I can brief it.

Presiding Examiner: I think the witness has shown familiarity, but I don't think he has been shown an expert in this.

Mr. Deakins: No.

Presiding Examiner: I think it is a question for briefing.

Mr. Deakins: I am an expert in that. I lost a case up in Illinois.

Presiding Examiner: Most of us think we are experts when

1632

we are writing the lease, but when somebody else starts playing hell with it, why we aren't half as expert.

Mr. Smith: Mr. Examiner, may I be heard.

Presiding Examiner: You may.

Mr. Smith: I think the question itself was too general. That was why it was improper, but I think it is a very

pertinent question that should be asked either on direct or cross-examination as to whether Texas Eastern has the obligation to do everything that Louisiana Gas Corporation has the obligation to do by virtue of acquiring the leaseholds and by virtue of assignments.

Presiding Examiner: We will get to that when you come to it. I don't think that is within the present question.

The Witness: With this concept of the production payment again which is a common thing in connection with loans being made on producing, or I should say productive properties, and in the sale of properties a fairly common thing for the previous owner to retain; that is, when you say the sellers retain a production payment, you mean the sellers retain the right to receive certain monies out of the production when, as and if produced.

Now, in this case, the sellers have retained such a right in regard to the liquids which will be produced and along with the gas by Texas Eastern at the Rayne Field.

Now, back to our principal concern here.

We wanted to make a deal with fixed prices as the owner

1633

of the leases, we have the obligation to operate those leases. What will those operating expenses be in the 10th year? What will they be in the 12th year? What will they be in the 5th year?

All we can do is make predictions which may or may not be correct. But to be certain that the cost of this gas to Texas Eastern would be fixed, we wrote this production payment as can be seen from the assignment and conveyance, to provide that as these liquids are produced, first, we deduct the operating expenses. Whatever may be left over, big or little, goes to the present owners of the leases as a production payment.

(1633)

Business-wise, what kind of protection is there that the income from the liquids will be large enough to cover the operating expenses?

I should like to say that it appears from our best estimate that in the beginning of the life of the field, when we have a pretty good idea what the operating expenses will be, that the income from the liquids will be more than ten times the operating expenses. So we think there is good coverage there, so far as the liquids always being able to more than cover whatever operating expenses are involved in Texas Eastern's duties with these leases.

Presiding Examiner: When you speak of more than ten times, you are speaking of the early stage as the liquids are exhausted

1634

in relation to the gas, that will decrease. But you estimate that they will still be more than sufficient?

The Witness: Yes, we do so estimate.

Now, with these goals in mind, let me repeat that we have been and we continue to be active in the gas supply market to acquire gas supply through the purchase of leases to get flexibility in gas deliveries, fixed price gas.

Now, one more thing in a general sense. The transfer of proved properties is customarily commonly carried out through an intermediary corporation. Now, gentlemen, this device is so common that in this particular case I never concern myself with where the intermediary corporation came from.

The intermediary corporations in the oil industry are in existence and have been in existence for long periods of time to carry out this particular function.

Now, in this particular case, remember, it is necessary to have the intermediary corporation so that these obligations

—that was one of the three considerations, the cash payments, the notes and the production payments—so that the notes would not appear on Texas Eastern's balance sheets.

By Mr. Deakins:

Q. I believe Mr. Osborn made that statement yesterday, did he not? A. That is correct.

Q. And you were in the hearing room when he made it?

1635

A. That is right, sir.

Q. All right, sir.

Let me ask you one other question while I have interrupted you, Mr. Jacobs.

You were remembering the advantages, do you recall at the time Mr. Cox was on the stand in the earlier part of these proceedings, there was considerable testimony about the effect of the Rayne Field contracts on favored nation's provisions of other contracts of Texas Eastern and possibly on the contracts of other pipeline companies. Are you familiar with that testimony? A. I have read that testimony.

Q. Will that pertain if the arrangements now proposed are consummated? A. That will not pertain if the arrangements now proposed are consummated. This is another advantage to all of us that grows out of the acquisition of gas supplied through leases.

In Texas Eastern's particular case, it was testified that favored nation's triggering out of the old Rayne Field gas purchase contracts could amount to as much as ten million dollars per year. Acquiring the gas supply in this way does not trigger favored nation's clauses. By the same token, other people buy gas in south Louisiana, or say generally other people buy gas in the area where gas is acquired through the acquisition of leases. Other people have price redetermination clauses

1636

in their contracts. This acquisition at Rayne Field, or acquisition of this type, will not affect price redetermination clauses of the general type that is in effect in the Gulf Company's area.

So that acquisition should have no effect on any other gas cost of Texas Eastern or to any other pipeline company.

Now, back to the point that in the transfer of developed properties where large amounts of money are involved, it is customary to make use of an intermediary corporation.

For example, in Docket No. G-10499, titled "In the Matter of El Paso Natural Gas Company," part of the gas supply in that docket number for which I understand a certificate has been issued, was based upon leases acquired by El Paso Natural Gas Company through a company known as the Gwinn Company of Texas.

Now,the deal there was a deal negotiated between El Paso and the owners of leases both approved, that is, productive and non-productive.

The people that own the leases are people in the oil and gas business in Texas, the principal party being named Murmanill Corporation.

The deal was put in the common form. This isn't—what we are presenting here is not a unique thing. This is the customary way that leases are transferred after they have been developed from one party to another.

1637

The deal in Docket 10499 was negotiated between El Paso and Murmanill, et al, and the properties were passed through the Gwinn Company Company of Texas to El Paso, so that El Paso would not have to show the notes on its books.

Now, this use of the intermediary corporation is also common in the transfer of oil and gas properties.

Now, this El Paso-Gwinn arrangement we have just spoken of, is almost exactly the same form as ours, gas properties involved.

Also in the Commission's files is information in Docket No. G-10354 in which the Atlantic Refining Company received certificates on properties formerly owned by the Houston Company of Texas

Houston was a smaller company. It sold out completely to the Atlantic Refining Company, producing leases, oil leases, gas leases, non-producing leases. The whole company was sold to Atlantic.

And in that transfer, again an intermediary is brought in.

Now, without going into details, the intermediary arrangement here is the kind of thing that goes into the so-called A, B, C arrangement under which oil and gas properties are transferred.

Another example of that in the Commission's files is Docket No. G-8493 in which the Sinclair Oil Company received certificates to sell gas off of properties formerly owned by the American Republic Corporation.

1638

Again, Sinclair bought American Republic, a going oil concern, and that deal again was transacted with the use of an intermediary corporation.

So much for the general answer to your question.

Q. Well, now, let me ask you this, Mr. Jacobs. I believe you testified the other day that you handled negotiations or attended all of the negotiations out of which the documents which make up Exhibit M-14 were developed, is that correct? A. I did so testify and I did handle those negotiations.

Q. Now, in connection with that, am I correct if I state that Louisiana Gas Corporation was created? Is that correct? A. That is correct.

(1638)

Q. Now, the other day you expressed a lack of knowledge of the affairs of Louisiana Gas Corporation and since that time at my instance, have you acquainted yourself with the affairs of that corporation and secured copies of the exhibits which we have identified this morning as Exhibit M-15, M-16, M-17 and M-18? A. I have acquainted myself with the affairs of Louisiana Gas Corporation since that time and have obtained the documents that you referred to.

Q. From whom did you obtain those? A. I obtained those from Mr. Head, the general counsel of Texas Eastern Transmission.

I went to him after the questions were raised in this

1639

hearing as to the particulars of Louisiana Gas Corporation, because when it became apparent that we had a good chance of consummating these negotiations, we knew that our requirements to make the deal—and this was completely discussed and explained to the present owners of the leases, that one of our requirements making the deal was through the intermediary corporation. At that time of the negotiations I went to Mr. Head, told him that we had that problem, and that I would like for him to take care of it.

Q. All right. Then I take if from what you have just said that the legal papers were prepared by lawyers and not by you. A. That is correct.

. . . . . .

1645

By Mr. Deakins:

Q. Now, Mr. Jacobs, referring you to Exhibit M-14, do you have a copy of that there? A. I do.

Q. Will you state for the record what part of what sections of that agreement entitled "Lease Purchase Agreement" pertain to the transfer of the leases from Continental

Oil Company, et al, to Louisiana Gas Corporation and Texas Eastern? A. First, on page 3 of the lease sale agreement, which is Exhibit I to Hearing Exhibit M-14, the first full paragraph——

Q. All right.

Presiding Examiner: What page is that now?

The Witness: Page 3 of the lease sale agreement, the first full paragraph.

This is the lease sale agreement, not the assignment and conveyance—the lease sale agreement.

By Mr. Deakins:

Q. On page 3?

1646

A. On page 3, which commences "Upon satisfaction or waiver."

Q. That is the first full paragraph that commences on page 3 of the document, entitled "Lease Sale Agreement." A. Which reads——

Mr. Deakins: Have you got a set of these, Mr. Huntsman?

Mr. Huntsman: I am trying to follow it in the one that is filed.

Mr. Deakins: You can't follow it on that thing.

Presiding Examiner: That is the charter.

Mr. Huntsman: This is the lease sale agreement that was filed with the Commission as part of the application.

Mr. Deakins: I know, but you can't follow the pagination. These are printed and single-spaced, Mr. Huntsman. It would be almost impossible. We will be talking about two or three things.

Presiding Examiner: Apparently the copy that was filed with the application is a typewritten copy, rather than a printed copy.

Mr. Deakins: Yes, sir. They hadn't been printed, and they didn't conform to the Commission's rules as to size.

(1646)

We filed those, but we didn't serve them as exhibits.

It is on page 4 of the one Mr. Huntsman is looking at, but it is on page 3 of Exhibit M-14, Section 2.

The Witness: The first full paragraph on page 3 of the

1647

document entitled "Lease Sale Agreement" commences: "Upon satisfaction or waiver of the foregoing conditions."

Now, the foregoing conditions are set forth commencing on page 1 of the same document, which four conditions are: first, the approval of title by buyer's attorneys. That condition has not been fully met, but the attorneys that are examining title are practically complete and say that the title is all right with a few minor title matters to be cleared up.

The second condition is the obtaining by the sellers of a satisfactory tax ruling from the Internal Revenue Service, and that ruling has been obtained, as I believe is shown by the record in this case.

The third condition is the obtaining of a satisfactory certificate on the part of Texas Eastern to build a line into the Rayne Field. That is the subject of the hearing that we are now participating in.

The fourth condition is the dismissal of the old certificate applications of the sellers.

Now, skipping back over to page 3, upon satisfaction of all those conditions, then, we start talking about a cl ing of the deal, and on down into the middle of the paragraph, it says: "on or before 10 days after the completion of the construction of such facilities."

By Mr. Deakins:

Q. What facilities?

1648

"Such facilities" refers to the first sentence of the paragraph which states "the construction of the necessary facilities to enable Texas Eastern to take and transport its gas production from Rayne Field."

Q. O.K. A. Now, within 10 days of completing the construction of those facilities, or 30 days after the conditions are met, whichever occurs earlier, the deal will be closed at a designated office: Vinson, Elkins, Elkins, Weems and Searls in the Esperson Building, Houston, Texas.

Then we go to the next paragraph and see what happens on the closing date.

Now, as to this particular instrument, on closing date—remember, this is the instrument between Louisiana Gas Corporation and the present owners of the field.

Q. This is the lease sale agreement? A. This is the lease sale agreement.

Q. All right. A. Louisiana Gas Corporation will receive from the present owners an executed assignment and conveyance which is the very same one that is attached to the lease sale agreement.

Q. It is marked Exhibit 1 to hearing Exhibit M-14, Section 2, I guess it is, and is entitled "Assignment and Conveyance", is that correct, Mr. Jacobs?

1649

A. That is correct.

Q. All right. A. Now, when the present owners of these valuable leases execute and deliver that assignment and conveyance, they have irrevocably transferred title of those leases out of themselves and into Louisiana Gas Corporation.

So, the next thing is what do they get back.

Well, simultaneously as is set forth in the second full paragraph on page 3, which commences "On the date the

sale is closed''—simultaneously, the present owners of the leases will receive from Louisiana Gas Corporation two things: a check for the cash part of the consideration——

Q. How much is that, sir? $12,420,500? Is that it? A. $12,420,500.

—and will also receive from Louisiana Gas Corporation a series of promissory notes which are non-interest bearing and which accrue over a period of approximately 16 years.

Now, when that happens, when that has happened, the present owners of the properties have the $12,420,500 check, the promissory notes of Louisiana Gas Corporation, and also they have retained the production payment in the assignment and conveyance.

Q. Well now, is there any mortgage provided for in

this paragraph you refer to? A. There is a mortgage.

Q. By whom will that be given and to whom will it be given? A. That will be given by Louisiana Gas Corporation to the present owners of the properties.

Q. When you talk about present owners of the property, Mr. Jacobs—I think this is clear in the record, but you are referring to Continental Oil Company, Sun Oil Company, M. H. Marr, and General Crude Oil Company, are you not? A. Those are the parties to whom I refer, and they are referred to in this document as first parties.

Q. All right, sir. Go ahead. A. Now, Louisiana Gas Corporation has assets of $5,000. Where does it get the $12,420,500 check to give to Continental Oil Company, et al., on closing date?

Well now, if we turn to the lease purchase agreement——

Q. That is Hearing Exhibit M-14. I guess it refers to——

Presiding Examiner: That seems to be the first part of——

Mr. Deakins: Yes, sir. It is a five-page instrument.

Presiding Examiner: All right.

The Witness: Well, look at paragraph IV in the document, entitled "Lease Purchase Agreement." We will see that thereby

1651

Texas Eastern and Louisiana Gas have agreed that the same closing, that is, the same closing as that which I have just described between Louisiana Gas and the present owners of the field—at this same closing, Texas Eastern and Louisiana Gas will have a closing under the lease purchase agreement.

Q. Well, as a matter of fact, it refers specifically to the lease sale agreement, does it not? A. That is correct.

Q. Which is an exhibit—— A. To the lease purchase agreement.

Q. Yes. A. Correct.

Q. O.K. A. Now, Texas Eastern, then, will give its check at the closing to Louisiana Gas Corporation for $12,420,500, and in return for that, Texas Eastern will receive the executed document which is entitled "Conveyance," which is part of Hearing Exhibit M-14, sub. II, from Louisiana Gas Corporation.

Now, when that happens, Texas Eastern has paid out the $12,420,500 check. Texas Eastern has now title in it with the obligations that run as to it and upon it as the person that owns the leases. Texas Eastern now has title to all of the leases in the Rayne Field. Texas Eastern has paid out one thing, $12,420,500. It has acquired properties on which there

1652

are certain obligations. One of the obligations that is on the properties is as set forth in the document entitled "Conveyance" but which obligation is not specifically on Texas Eastern—one of the obligations is the payment of notes of Louisiana Gas Corporation.

1653

Presiding Examiner: Those payments are secured by mortgage. And is that mortgage—let me ask you this question, perhaps. Is that mortgage a mortgage on real estate, a chattel mortgage, or a mortgage on a chattel real? What is the status of that mortgage?

Mr. Deakins: That is a mortgage——

Presiding Examiner: Maybe Mr. Head could answer that question.

Mr. Deakins: It is a mortgage on real estate, as well as chattels.

Presiding Examiner: I see. And would be classified as an interest in real estate?

Mr. Deakins: Yes, sir.

Presiding Examiner: All right.

By Mr. Deakins:

Q. Now, that mortgage that the Examiner inquired about, will that be executed by Texas Eastern? A. That will not.

Q. Will the notes? A. The notes will not be executed by Texas Eastern.

I should like to refer to the specific words in regard to the status of the notes, the specific words in the document entitled "Conveyance", which is Exhibit No. M-14, Roman II.

Q. Where will you find what you are going to refer to? A. On the front page, we come down the first paragraph, which starts out "In consideration"—excuse me, I think I am

1654

going a little fast for Mr. Huntsman.

The conveyance, the first paragraph starts off, "In consideration"—skip that. The next paragraph starts off, "The properties and interests", underneath that sub (a) and sub (b). Come down into the full margin working

under sub (b), "and by the execution hereof grantee acknowledges," is the way the line starts. That is the first line. Count down through the second, third, fourth, fifth—let me back up there. I would like to call attention to all of the words following "and the executive hereof"—"and by the execution hereof grantee acknowledges"—I would like to call attention to all the words after that, to the end of the paragraph—in particular "grantee acknowledges that the promissory notes representing the credit portion of the purchase price for the acquisition by grantor from Continental, et al, of all the properties covered by this assignment and conveyance," and skipping some words, "will continue as burdens on such properties and interest conveyed hereby until the notes are paid in full;"

Q. That is a recognition of the notes that Louisiana Gas will give to Continental, et al?

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1656

The Witness: At the semicolon, where I just finished reading, "provided, however, that grantee does not assume any personal responsibility"—

By Mr. Deakins:

Q. It says liability.

1657

A. "the grantee does not assume any personal liability on said notes or agree to pay any deficiencies in the event of foreclosure."

Q. Now, I want to ask you this. Do the sellers—are the sellers familiar with that fact?

Mr. Huntsman: Object to it on the grounds——

Presiding Examiner: I think that will speak for itself.

Mr. Deakins: Well, he has been in the negotiations.

Presiding Examiner: Well, now, we know from the records in this case that the sellers are represented by com-

petent counsel in the hearing, and I would assume that they were represented by competent counsel in the negotiations. There has been nothing to indicate in any way, in previous records, that either Sun Oil Company or Continental or Mr. Marr——

Mr. Huntsman: Crude Oil.

Presiding Examiner: General Crude. Mr. Marr is the only one who is an individual, the others are corporations. And Mr. Marr was up here himself in the earlier case, riding on it very closely. I am sure, from what I observed of Mr. Marr, that nothing goes on there that he doesn't know about.

Mr. Deakins: I think you are right.

Mr. Examiner, could I state the purpose of the question?

Presiding Examiner: All right.

Mr. Deakins: The reason for this question was—maybe I am anticipating, but there seemed to be those who we have not convinced. And I wanted to obviate any claim that they might

1658

make that we have not disclosed this thing to these people—therefore, they could set it aside. You see what I mean?

Presiding Examiner: I think that is something we cannot get into. We cannot presuppose a lawsuit. I think if we start in covering all the angles where somebody might go down a side street or a back alley somewhere, we will be here from now to Christmas.

Mr. Deakins: I agree with the Examiner thoroughly.

Presiding Examiner: And I am not going to let you start it, or anybody else.

Mr. Deakins: That is fine—if none of us are going to, that is just fine.

Presiding Examiner: All right.

The Witness: Well, at this point in the closing, we should

have the picture of the three parties. Texas Eastern has issued the check.

By Mr. Deakins:

Q. Will have issued the check. A. This is at closing. I am assuming we are at closing. Texas Eastern will have issued the check. Texas Eastern has assumed the responsibilities as the owner of the leases. Louisiana Gas received the check from Texas Eastern, issued a check in the same amount to the present owners of the leases. So it is of no consequence what the assets of Louisiana Gas Corporation are.

1659

The present owners of the leases have transferred all of their rights in these leases through Louisiana Gas Corporation, and into Texas Eastern. Louisiana Gas Corporation has no continuing interest whatsoever in these properties.

The present owners of the leases end up with the three considerations that we said were negotiated in making this arrangement. Number One, they have got the check for the cash; Number Two, they have the obligations of Louisiana Gas Corporation on the notes, which obligations are recognized by Texas Eastern as obligations against the property; and, Thirdly, they have retained the production payment out of the liquids.

Q. All right. Now, Mr. Jacobs, after the date of the closing, when these documents have been executed, and the money transferred, will Louisiana Gas have anything to do with the properties after that time? A. Nothing whatsoever.

Mr. Huntsman: Object to this, Mr. Examiner.

Presiding Examiner: Well, the record will speak for itself on that, I think. The documents will speak for themselves.

Mr. Deakins: I think that is right. But you know I want to obviate any claim——

Presiding Examiner: I think I am going to leave what the

witness has said stand. But let's not get into this any further. I think we are getting a little far afield here.

1660

Mr. Deakins: I didn't intend to go into——

Presiding Examiner: All right.

By Mr. Deakins:

Q. Then,——

Presiding Examiner: Are you almost done with your direct testimony?

Mr. Deakins: Yes, sir, I have about two questions.

Presiding Examiner: All right, because we have gone past our usual recess time.

By Mr. Deakins:

Q. I understood your testimony to be, Mr. Jacobs, that the title of these leases, the legal title of these leases will then be in Texas Eastern Transmission Corporation. A. That is correct.

Q. Now, are there going to be any strings tied on to that transfer of that title? I mean is it a clear transfer of title? A. It is a clear transfer of title.

Q. Subject to anything? A. Well, it is subject to the obligations under the assignment and conveyance.

Q. What obligations are we referring to now? Whose obligations? A. The obligations under the assignment and conveyance that have to do with the production payment, which will have to be

1661

made by Texas Eastern.

Presiding Examiner: It is also subject to any provisions for security that are contained in the mortgage?

The Witness: That is correct.

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A2089

Docket No. G-12446
Exhibit No. H(v)(4)
Hearing Ex. No. 3-f

CONTINENTAL OIL COMPANY
(Rayne Field)

Contract 2-1-57

A2090

Texas Eastern Contract #887
Rayne Field
Acadia Parish, Louisiana
February 1, 1957

CONTINENTAL OIL COMPANY
AND
TEXAS EASTERN TRANSMISSION CORPORATION

GAS PURCHASE CONTRACT

Article	
I	Initial Provisions
II	Seller's Reservations
III	Quantity of Gas
IV	Point of Delivery
V	Pressure
VI	Measuring Stations
VII	Measurements
VIII	Quality of Gas
IX	Price
X	Billing and Payment
XI	Force Majeure
XII	Default
XIII	Term
XIV	Warranty of Title
XV	Arbitration
XVI	Addresses
XVII	Miscellaneous

A2091

This Agreement, made and entered into as of the 1st day of February, 1957, by and between CONTINENTAL OIL COMPANY, hereinafter referred to as "Seller", and TEXAS EASTERN TRANSMISSION CORPORATION, hereinafter referred to as "Buyer",

Witnesseth, That:

WHEREAS, Buyer owns and operates a natural gas transmission system; and

WHEREAS, Seller owns interests in oil, gas and mineral leaseholds and/or lands which are or may be productive of gas, situated in the Rayne Field in Acadia Parish, Louisiana, described in Exhibit "A", attached hereto, and shown within the hatched lines on the map attached hereto as Exhibit "B", both of which exhibits are made a part hereof; and

WHEREAS, Seller desires to sell such gas to Buyer and Buyer desires to purchase same to meet a portion of the requirements of its gas transmission system; and

WHEREAS, the parties hereto have agreed that the following terms shall be construed to have meanings as follows:

1. The term "day" shall mean a period of twenty-four (24) consecutive hours beginning and ending at eight o'clock a.m. Central Standard Time.

2. The term "month" shall mean a period beginning at eight o'clock a.m. on the 1st day of a calendar month and ending at eight o'clock a.m. on the 1st day of the next succeeding calendar month.

3. The term "year" shall mean a period of twelve (12) months beginning on November 1st of each year, provided that if initial deliveries hereunder are not initially com-

menced on November 1st of any year, then the period from the commencement of initial deliveries hereunder to the succeeding November 1st shall be treated as a year hereunder except that any obligation based on a full year period shall be reduced in the proportion that such shorter period bears to a twelve (12) months period.

A2092

4. The term "gas" shall mean natural gas including both gas well gas and casinghead gas, and the residue gas therefrom, of the quality described in Article VIII hereof.

5. The term "MCF" shall mean one thousand (1,000) cubic feet of natural gas on the measurement basis set forth in Article VII hereof.

6. The term "Seller's Gas Reserve" shall mean the estimated total quantity of economically recoverable gas, attributable to Seller's interest, which will be available for delivery to Buyer hereunder, and contained in the portions of the various gas and/or oil bearing formations or reservoirs down to and including the Nodosaria "A" sand which underlie the leaseholds and/or lands owned or controlled by Seller described in Exhibit "A" and "B" attached hereto, and covered by this Agreement on the date of any estimate or determination of Seller's Gas Reserve, plus the total quantity of gas delivered by Seller to Buyer in accordance with this contract after the date of initial delivery of gas hereunder.

7. The term "Seller's Delivery Capacity" shall mean the maximum quantity of gas, attributable to Seller's interest, which can be withdrawn daily (subject to any valid rules, orders and regulations of any State or Federal regulatory body and without injury to the reservoir or wells as determined in Seller's discretion) from the above mentioned formations or reservoirs underlying the leaseholds

and/or lands of Seller covered by this Agreement and which is available for delivery to Buyer at the point or points of delivery hereunder at the pressure provided for in Article V hereof.

8. The term "Daily Contract Quantity" shall mean the quantity of gas per day, averaged over each year, which Buyer is required, by the provisions of Article III hereof, to purchase from Seller hereunder.

9. "Nodosaria 'A' Sand", as used herein, shall be defined and construed as meaning that sand established at a depth of 13,650 feet to 13,890 feet on the basis of the electric log dated October 25, 1954, of the Mrs. Telice G. Petitjean No. 1 well located in Section 1, Township 9 South, Range 2 East, Rayne Field, Acadia Parish, Louisiana, and indicated to be productive of gas and/or condensate at said depth, and correlatives of such sand.

A2093

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto do hereby covenant and agree as follows:

I. INITIAL PROVISIONS

1. Subject to all of the terms, conditions and limitations hereinafter set forth, Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to purchase and take from Seller, gas in the quantities hereinafter provided which may be produced from Seller's Gas Reserve.

2. Each of the parties hereto agrees to proceed with diligenee in a good faith effort to obtain such governmental authorizations and certificates of public convenience and necessity as may be necessary to enable it to perform its other obligations under this Agreement.

(a) If all such governmental authorizations and certificates of public convenience and necessity have not been received upon terms entirely satisfactory to both parties hereto and have not been accepted by each party as to its respective authorizations and certificates on or before September 1, 1957, then either party may at its election, at any time thereafter prior to the time such authorizations and certificates have been approved and accepted by both parties, terminate and cancel this contract. If a party wishes to cancel, it shall give a notice of cancellation fixing a date for termination no earlier than thirty (30) days from the time of giving notice. Such proposed termination date shall be the effective date

of termination unless prior thereto both parties shall have approved all authorizations and certificates and each shall have accepted its own, in which case the notice of cancellation shall be considered withdrawn, void, and without effect from the time of giving thereof. Each party shall inform the other promptly of any action by it which constitutes approval, acceptance or rejection of such authorizations and certificates of public convenience and necessity. For the purpose of this Paragraph 2, a "temporary certificate," within the meaning of that term as used in the Natural Gas Act shall not be considered a certificate of public convenience and necessity sufficient to enable a party to perform its obligations under this Agreement.

(b) Neither party shall be obligated to take further action or to participate in the effort of either party to obtain governmental authorizations and certificates of public convenience and necessity after September 1, 1957 unless it elects to do so, and then only so long as it may choose to continue to do so, and without liability either party may withdraw its applications for such certificates and authori-

zations and take no further action with respect thereto at any time after such date.

(c) If at any time there should be a change in the applicable law with respect to any such governmental authorizations and certificates of public convenience and necessity relieving either party hereto in any particular of a requirement or necessity theretofore existing with respect to obtaining governmental authorizations and certificates or giving such party privileges of election with

respect to further proceeding not permitted at the time of execution of this contract or of the institution of its applications in accordance herewith, then such party may without liability hereunder exercise any such election or otherwise modify, alter or withdraw its said applications in accordance with such change in the applicable law without otherwise altering or affecting its remaining obligations hereunder.

3. Upon acceptance by both Buyer and Seller of the necessary governmental authorizations and certificates of public convenience and necessity referred to above, Seller agrees to commence and prosecute with due diligence the construction of the delivery facilities necessary to enable Seller to deliver at the point or points of delivery hereinafter specified the quantities of gas contemplated by this Agreement, and Buyer agrees to commence construction of and prosecute with due diligence to completion the facilities necessary to enable Buyer to receive such gas at said point or points of delivery within seven (7) months after receipt and acceptance of the governmental authorizations and certificates of public convenience and necessity referred to above. Buyer's obligation to take and pay for, or pay for if available and not taken, the Daily Contract Quantity provided for in Article III hereof shall com-

mence at the expiration of said seven (7) month period or at such time thereafter as Seller has completed the construction of Seller's delivery facilities and is ready and able to deliver such quantities of gas; provided, however, if Buyer is delayed by force majeure in the construction of Buyer's facilities, then the time specified above for the commencement of Buyer's said take or pay for obligation shall be extended for the number of days Buyer is so delayed; provided further, that if the time for the commencement of such take or pay for

obligation shall be extended for a period in excess of one hundred fifty (150) days by reason of force majeure affecting Buyer in the construction of its facilities, then, at any time after the expiration of said one hundred fifty (150) day period and prior to the completion of the construction of Buyer's facilities, Seller shall have the right to terminate and cancel this contract by giving written notice to Buyer of its intention to cancel this Agreement at least thirty (30) days in advance of such proposed date of cancellation, and upon the date of such cancellation both parties shall be relieved of further obligations hereunder; provided, however, if prior to the expiration of such notice period, Buyer shall either (i) complete the construction of Buyer's facilities and advise Seller of its readiness to commence the receipt of gas hereunder, or (ii) commence paying for the Daily Contract Quantity provided for in Article III hereof effective as of the date of receipt of such notice of cancellation, then such notice of cancellation shall be voided. Any payments made by Buyer pursuant to this Paragraph 3 in advance of the initial delivery of gas hereunder shall be made monthly at the time and at the prices provided for herein as if the Daily Contract Quantity of gas were actually being delivered. If, pursuant to this Paragraph 3, Buyer pays Seller for gas not taken,

then, Buyer shall have the right to make up for the quantity of gas so paid for by taking gas in excess of the annual quantity of gas Buyer is obligated to take or pay for during any year or years of the first five (5) years of the primary term of this Agreement following the date of initial delivery of gas hereunder. Buyer shall not be required to pay Seller for such make up gas for which payment shall already have been made except that if the weighted average price per MCF hereunder during any

year in which the make up gas is taken exceeds the weighted average price per MCF paid by Buyer for the quantity of gas not taken, then Buyer shall pay to Seller for such make up gas the difference between said average prices.

4. It is recognized that in order to take deliveries of the full quantities of gas contemplated by this Agreement, it will be necessary for Buyer to construct (i) a lateral pipeline to the point of delivery hereunder and (ii) facilities to increase the capacity of its existing main 30-inch transmission pipeline. Buyer may be able, but shall not be obligated, to complete the construction of such lateral pipeline prior to the completion of said facilities on its main transmission pipeline. When and if Buyer shall have completed such lateral pipeline, Seller may elect to commence interim deliveries of gas hereunder pending the completion of the construction of the facilities on Buyer's main transmission pipeline. Upon receipt of written notice of such election, Buyer shall promptly purchase and receive interim deliveries in such quantities as Buyer may require from time to time within the capacity of its then existing 30-inch main transmission line to meet its existing and future gas sales markets after satisfaction of its existing and future gas purchase and supply rights and obligations; provided, that Seller shall sell and deliver to Buyer and

Buyer shall take and pay for, or pay for if available and not taken, not less than sixteen thousand seven hundred seventy-four (16,774) MCF per day averaged over each month or fraction thereof during the period

of such interim deliveries. If Buyer pays Seller for any gas not taken during the period of such interim deliveries, Buyer shall have the same make up privileges with respect to the quantities of gas so paid for but not taken as are set forth in Paragraph 3 of this Article I. Such interim deliveries shall be sold and purchased at the price in effect under this Agreement at the time such interim deliveries are made and in accordance with all the other applicable terms and provisions of this Agreement except that it is specifically understood and agreed that any such interim deliveries of gas hereunder shall not be considered as constituting the initial delivery of gas hereunder and the provisions of Article III hereof shall be inapplicable and of no force or effect with respect to such interim deliveries. The quantities of interim deliveries taken and paid for by Buyer shall be credited against any take or pay for obligation prior to the initial delivery of gas hereunder which may arise pursuant to the provisions of Paragraph 3 of this Article I.

5. The initial delivery of gas hereunder shall commence upon the date of completion of construction of the facilities of both Buyer and Seller necessary to deliver and receive the quantities of gas contemplated by Article III hereof.

6. If for any reason, including force majeure, Buyer shall be unable to commence receiving initial deliveries of gas hereunder within twelve (12) months from the date of commencement of Buyer's take or pay for obligations under Paragraph 3 of this Article I, then at any time thereafter and prior to the time Buyer is ready to commence

receiving initial deliveries of gas hereunder, Seller shall have the right to terminate and cancel this Agreement by giving written notice to Buyer at least thirty (30) days' prior to such proposed date of cancellation; provided, however, if prior to the expiration of such notice period Buyer shall complete the construction of its facilities and announce its readiness to commence the receipt of gas hereunder, such notice of cancellation shall be voided. In the event such notice of cancellation is not voided, then within thirty (30) days after such date of cancellation Seller shall pay to Buyer the total of all amounts theretofore paid by Buyer to Seller for gas not taken hereunder less the total of all amounts expended by Seller in order to maintain leases during the period in which such take or pay obligations were incurred.

II. SELLER'S RESERVATIONS

Seller expressly reserves unto Seller and to Seller's successors and assigns, the following prior rights with respect to its interest in the leaseholds and/or lands subject hereto, together with sufficient gas to satisfy such rights:

1. To operate Seller's said leaseholds and/or lands subject hereto free from any control by Buyer in such manner as Seller, in Seller's sole discretion, may deem advisable including without limitation, the right, but never the obligation, to drill new wells, to repair and rework old wells, renew or extend, in whole or in part, any lease subject hereto, and to abandon any well or surrender any lease, in whole or in part, when no longer deemed by Seller to be capable of producing gas in paying quantities under normal methods of operation.

2. To process, or to have processed for it, the gas to be delivered hereunder for the recovery of ethane and heavier

liquid and liquefiable hydrocarbons together with such methane as cannot be separated from such ethane and heavier liquid and liquefiable hydrocarbons under normal operation of any conventional processing facilities which Seller may from time to time install; provided, however, that the volume of ethane so reserved to Seller together with such methane as it not separated from ethane and heavier liquid and liquefiable hydrocarbons shall not exceed a daily average of eight percent (8%) of the volume of Seller's gas delivered to the processing plant during any month. The residue gas delivered to Buyer shall meet the quality specifications set forth in Article VIII hereof.

3. To use gas for fuel in the opertaion of any plant in which the gas is processed, for developing and operating Seller's leaseholds and/or lands subject hereto and Seller's other leaseholds and/or lands located within five (5) miles of any leaseholds and/or lands subject hereto including without limitation, gas for gas lift operations in a closed system or systems, for operation of Seller's pipe lines, water stations, camps, compressor facilities, and other miscellaneous uses incident to such operations, and to fulfill obligations to Seller's lessors. The requirement that use of gas for gas lift shall be limited to use in a closed system shall not apply to quantities less than seven hundred fifty (750) MCF per day used for gas lift on the leaseholds and/or lands subject hereto.

A2101

4. To use the gas for repressuring, pressure maintenance and cycling operations with respect to the formations or reservoirs down to and including the Nodosaria "A" sand underlying the leaseholds and/or lands described in Exhibit "A" attached hereto; provided that in the event Seller shall exercise such right, then Buyer shall have the right to extend the term of this Agreement for a period of time sufficient to enable Buyer to purchase and

receive hereunder at the rate of withdrawal provided in Article III hereof, the total quantity of gas which would have been sold and delivered hereunder during the primary term hereof in the absence of such repressuring, pressure maintenance or cycling operations. The gas to be furnished to make up such deferred volumes of gas shall be delivered by Seller and purchased by Buyer under the price and other provisions of this Agreement in effect at the time of the delivery and receipt thereof. The volume of deferred gas to be so delivered shall be equal to the difference between (i) the total volume Buyer would have been entitled to receive hereunder during the period in which such operations were conducted had no gas been used for such operations, less the quantities of gas lost or consumed through shrinkage and use as plant fuel or heater fuel in such repressuring, pressure maintenance or cycling operations and (ii) the total volume of gas actually received by Buyer during such period.

In making the above calculations, there shall be included in item (ii) the full volume of gas actually received during this period by Buyer, whether delivered in accordance with all of the provisions hereof or not, and there shall not be included in item (i) any quantity or quantities available for delivery hereunder which Buyer may have failed to receive for reasons other than Seller's use of same in the above operations.

5. To deliver gas as an accommodation to other operators in or near the Rayne Field for the purpose of drilling or reworking wells; provided, however, the sale of such gas shall not preclude Seller from delivering gas to Buyer in the quantities herein specified.

6. To form or to participate in the formation of any unit which may include all or any part of the leaseholds

and/or lands subject hereto and thereafter to increase, decrease, alter or revise any unit so formed so as to combine and unitize such leaseholds and/or lands with properties owned by others, provided that this Agreement shall continue to apply to the interest of Seller in any such unit attributable to the leaseholds and/or lands subject thereto.

7. To sell gas to others or to take same in kind and dispose thereof in such quantity as Seller may elect prior to date of initial delivery hereunder, or thereafter during such periods as force majeure affecting Buyer in excess of fifteen (15) days is applicable hereunder. If a period of notice is required to

terminate any agreement for the sale of gas to others, or any agreement with respect to the taking of same in kind, Seller reserves all volumes of gas required to be delivered during the period of such notice but in no event shall the sale of gas to others or the taking of same in kind continue for a period in excess of sixty (60) days following the date upon which Buyer gives written notice to Seller that it is able to take initial delivery or resume taking delivery of gas hereunder, as the case may be.

8. Nothing herein shall be construed to require Seller to produce any well or wells in a manner which would not constitute good operating practice or in excess of the maximum efficient rate of flow of such well or wells or in any other manner which would cause waste of oil or gas, or which, in the discretion of Seller, would be deemed capable of causing injury to the wells or reservoirs. Seller may also withhold or limit deliveries of gas to Buyer from reservoirs containing an oil rim.

III. Quantity of Gas

1. Seller has made available to Buyer data regarding the productive status of its leaseholds and/or lands described

(A2103)

in said Exhibit "A", and Seller agrees to make a good faith effort to keep Buyer informed as to any reductions of the leaseholds and/or lands covered by this Agreement and any substantial changes in the productive status of any such leaseholds and/or lands.

A2104

2. Seller and Buyer have determined by joint study that Seller's Gas Reserve amounts to four hundred twenty-four million three hundred seventy-six thousand (424,376,000) MCF of gas. From time to time after the date hereof but not more often than once in any two (2) year period, upon request of either party, Seller and Buyer will conduct a joint study of Seller's Gas Reserve to redetermine same. Buyer may, at its election, include in such study any other sellers of gas to Buyer from any wells producing gas in the Rayne Field under contracts providing for determination of such other sellers' gas reserves by similar studies. If Buyer and all sellers included in such study are unable to agree upon the quantity of Seller's Gas Reserve or that of any other seller to Buyer within ninety (90) days after receipt of request for such joint study, then the determination of such reserve in dispute shall be submitted to and determined by arbitration in the manner provided in Article XV hereof. Each such redetermination shall be effective as of the date agreed upon or the date fixed by arbitration, whichever shall occur later and shall remain in effect until superseded by a later redetermination.

3. (a) Subject to the provisions of this Agreement Seller agrees to sell and deliver to Buyer and Buyer agrees to take and pay for, or pay for if available and not taken, the Daily Contract Quantity hereinafter provided for in this Article III averaged over each year of the term of this Agreement. Until increased or decreased pursuant to the

provisions of this Article III, the Daily Contract Quantity hereunder shall be fifty-eight thousand one hundred thirty-four (58,134) MCF of gas.

(b) If at any time during the term hereof the quantity of gas in Seller's Gas Reserve, as shown by the estimate or determination thereof then in effect in accordance with the provisions of this Article III hereof, shall exceed or shall be less than a quantity equal to seven million three hundred thousand (7,300,000) MCF of gas for each one thousand (1,000) MCF of the Daily Contract Quantity then in effect under the provisions of this Article III, then the Daily Contract Quantity shall be increased or decreased, as the case may be, to a quantity of gas equal to one thousand (1,000) MCF for each seven million three hundred thousand (7,300,000) MCF of gas so estimated or determined to be contained in Seller's Gas Reserve; provided that if Seller's Delivery Capacity (unless reduced by unavoidable accident as hereinafter defined) is then less than one hundred and twenty-five percent (125%) of the Daily Contract Quantity thus determined, such Daily Contract Quantity shall be reduced to a quantity equivalent to eighty percent (80%) of Seller's Delivery Capacity.

(c) If for any period of sixty (60) consecutive days Seller's Delivery Capacity shall be less than one hundred and twenty-five percent (125%) of the Daily Contract Quantity then in effect hereunder (and such condition shall not be the result of unavoidable accident as hereinafter defined), Buyer shall have the right by serving written notice upon Seller to reduce the Daily Contract Quantity then in effect hereunder in proportion to the reduction in Seller's Delivery Capacity below a quantity equal to one

hundred and twenty-five per cent (125%) of such Daily Contract Quantity. Thereafter such reduced Daily Contract Quantity shall be in effect unless and until further reduced or increased in accordance with the provisions of this Article III. In the event of a reduction in the Daily Contract Quantity pursuant to the provisions of this Subparagraph (c), Seller shall have the right at any time while such reduction in Daily Contract Quantity is in effect to request a new test of Seller's Delivery Capacity, and if such test shall establish that Seller's Delivery Capacity has been increased since the last test, then the Daily Contract Quantity shall be increased by a quantity equal to eighty per cent (80%) of the increase in Seller's Delivery Capacity up to but not in excess of an increased Daily Contract Quantity equal to the Daily Contract Quantity in effect prior to such reduction, or as fixed during the period of reduction by a redetermination of Seller's Gas Reserve.

4. Seller's Delivery Capacity shall be determined (i) at the time of each estimate or determination of Seller's Gas Reserve pursuant to Paragraph 2 of this Article III, (ii) at such times as requested by Seller pursuant to Subparagraph (c) of Paragraph 3 of this Article III, and (iii) at such other times, not more frequently than twice in any twelve (12) month period, as requested by Buyer or Seller. Each determination shall be made by actual measurement or test conducted over a period of time not to exceed ten (10) days of the quantities of gas Seller can legally produce and deliver into Buyer's pipe line pursuant to the terms of this Agreement up to one hundred twenty-five per cent (125%) of the total of the Daily Contract Quantity then in effect and any increase in such Daily Contract Quantity then under consideration pursuant to the terms of this Agreement.

A2107

5. For the purposes of this Article III, the term "unavoidable accident" shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accidents to wells, machinery, or lines of pipe, the necessity for making repairs or alterations thereto, freezing of wells or lines of pipe, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of Seller; provided, however, that said term shall not mean or include any cause which by the exercise of due diligence Seller is able to overcome; and provided, further, that in no event shall said term mean or include partial or entire failure or depletion of gas wells or sources of supply of gas. It is understood and agreed, however, that the settlement of strikes or lockouts shall be entirely within the discretion of Seller and that any obligation, express or implied, on the part of Seller to remedy any "unavoidable accident", if within Seller's control, with reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in Seller's discretion.

6. Seller recognizes that due to operating conditions, varying market demands and the difficulty of apportioning receipts of gas from various sources, Buyer may not be able to take gas from Seller during any definite period at exactly constant rates. Buyer shall, however, maintain as nearly a constant rate of takings of the quantities provided for in this Article III

A2108

as practicable and subject to the other provisions hereof shall balance deficit takings from Seller under this Agree-

ment by excess takings from Seller hereunder as soon as practicable after such variations shall have occurred and shall have been ascertained, and Buyer may balance excess takings from Seller hereunder by curtailed takings from Seller hereunder. It is further agreed that:

(a) Buyer shall take actual delivery of all gas legally produced from oil wells and tendered as such by Seller.

(b) Buyer shall take actual delivery during each month of an average daily quantity of gas equal to not less than fifty percent (50%) of the Daily Contract Quantity then in effect, including therein the quantities taken under Subparagraph (a) of this Paragraph 6 of Article III.

(c) Buyer shall take and pay for, or pay for if available and not taken, an average daily quantity of gas during each month equal to not less than seventy-five percent (75%) of the Daily Contract Quantity then in effect.

(d) Seller shall not be obligated to deliver in any day a quantity of gas in excess of one hundred and twenty-five percent (125%) of such Daily Contract Quantity then in effect hereunder.

(e) Subject to the other provisions hereof, nothing herein contained shall prevent Buyer from purchasing from Seller hereunder at any time quantities of gas greater than the Daily Contract Quantity then in effect hereunder, provided that any quantities in excess of one hundred and twenty-five percent (125%) of the Daily Contract Quantity shall be delivered solely at Seller's election when requested by Buyer.

A2109

7. In the event Buyer is required by the provisions of this Agreement to pay Seller for a quantity of gas which Buyer shall not have actually taken during any year of the term hereof, then to the extent that Buyer's deficient

takings during such year are not the result of reductions in average daily takings below seventy-five per cent (75%) of the Daily Contract Quantity during any month or months, Buyer may make up for such deficient takings during the next succeeding year of the term hereof by applying against such deficiency the gas taken during such succeeding year in excess of the quantity of gas Buyer is obligated to take or pay for during such year. Buyer shall not be required to pay Seller for gas applied in any year against a deficiency which shall have arisen during the previous year and for which payment shall already have been made, except that if the weighted average price per MCF hereunder during the year in which the make-up gas is taken exceeds the weighted average price per MCF in effect during the year in which the deficiency arose, then Buyer shall pay to Seller for such make-up gas the difference between said average prices. During any year in which Buyer may be entitled to make up gas, no credit shall be given therefor until Buyer has taken the total Daily Contract Quantity required to be taken for such contract year.

8. It is understood and agreed that nothing in this Agreement shall be construed to require Buyer to purchase and receive from Seller or pay Seller for a quantity of gas in excess of the total quantity of gas per day which the wells on the leaseholds and/or lands covered by this Agreement may produce at their respective allowable rates of flow under the

applicable rules, regulations and orders or regulatory bodies having jurisdiction.

9. If at any time or times the Daily Contract Quantity hereunder is insufficient to enable Seller to protect the formations or reservoirs covered hereby and underlying

the leaseholds and/or lands described in Exhibit "A" from drainage by other operators producing from the same common formations or reservoirs by maintaining ratable withdrawals with such other operators pursuant to the applicable rules and regulations of any regulatory body having jurisdiction and Seller is unable to adjust deliveries between reservoirs to prevent such drainage, then upon the written request of Seller, the Daily Contract Quantity hereunder shall be increased during the period of time such condition exists to such quantity of gas as will enable Seller to prevent such drainage.

IV. Point of Delivery

1. The point of delivery of the gas hereunder shall be the outlet of Seller's meter located in the south half of Section 47, Township 9 South, Range 2 East, Acadia Parish, Louisiana; provided, however, if Seller elects to process such gas or have same processed at a plant located upon said tract the point of delivery shall be the outlet of Seller's meter located at or near the tailgate of the processing plant.

2. As between the parties hereto, Seller shall be in control and possession of the gas deliverable hereunder and responsible for any damage or injury caused thereby until the same shall have been delivered to Buyer, after which delivery Buyer shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

V. Pressure

1. The gas to be delivered hereunder shall be delivered by Seller into Buyer's transmission line at the point of delivery against the pressure existing therein from time to time at said point of delivery, up to but not in excess of one thousand (1,000) pounds per square inch gauge.

Neither party shall be obligated to install or operate compression facilities in order to deliver or receive gas hereunder. In the event compression facilities are required from time to time to deliver or receive gas hereunder from any well or wells, Seller shall advise Buyer in writing as to the producing formation and well or wells requiring such compression facilities and shall notify Buyer whether it will install and operate the necessary compression facilities in order to deliver such gas hereunder. If Seller advises Buyer that it will not install such compression facilities, then Buyer shall advise Seller in writing within sixty (60) days after receipt of Seller's written notice whether Buyer will install and operate same. In the event Buyer does not install such compression facilities within a reasonable time after receiving notice from Seller that Seller will not install such compression facilities, Buyer shall release by written instrument from the terms and provisions of this Agreement such producing formation underlying the acreage attributable to the well or wells requiring compression and with respect to which such notice was given. In the event either party elects to install compression facilities, such party shall have the right at any time thereafter to discontinue the operation of such compression facilities upon sixty (60) days' prior written notice to the other party. If the other

party does not serve written notice of its election to install and operate substitute compression facilities within said sixty (60) day period, then the producing formation with respect to which such compression facilities were being operated underlying the acreage attributable to the well or wells requiring compression shall be released from the terms and provisions of this Agreement.

2. Seller shall make reports to Buyer, as often as may reasonably be required by Buyer, of the pressure at which

the gas is being delivered hereunder and the rate of such deliveries. Seller shall have agents or employees available at all times to receive from Buyer's dispatchers advices and requests for changes in the rates of delivery of gas hereunder as required by Buyer from time to time.

VI. Measuring Stations

1. Seller shall install, maintain and operate, at Seller's own expense, at or near the point of delivery, a measuring station properly equipped with orifice meters, flange connections, orifice plates, and other necessary equipment by which the volume of gas delivered hereunder shall be measured. Orifice meters shall be installed, maintained and operated in accordance with Gas Measurement Committee Report No. 3, including the appendix thereto, dated April, 1955, of the American Gas Association. Buyer shall have access to such metering equipment at reasonable hours, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by Seller.

2. Buyer may install, maintain and operate, at its own expense, such pressure regulators and check measuring equipment as it shall desire

and Seller, to the extent that Seller has the right to do so, hereby grants to Buyer the right to install, maintain and operate such equipment in Seller's measuring station or stations, provided that such equipment shall be so installed as not to interfere with the operation of Seller's measuring equipment. Seller shall have access to such check measuring equipment at reasonable hours, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by Buyer.

3. Each party shall have the right to be present at the time of any installing, reading, cleaning, changing, repair-

ing, inspecting, testing, calibrating, or adjusting done in connection with the other's measuring equipment used in measuring deliveries hereunder. The records from such measuring equipment shall remain the property of their owner, but upon request each will submit to the other its records and charts, together with calculations therefrom, for inspection and verification, subject to return within ten (10) days after receipt thereof.

4. In the event Seller's metering equipment is out of service, or registering inaccurately, the volume of gas delivered hereunder shall be estimated:

(a) By using the registration of Buyer's check measuring equipment if installed and accurately registering, or in the absence of (a);

(b) By correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculation or, in the absence of both (a) and (b), then;

(c) By estimating the quantity of delivery by deliveries during periods under similar conditions when the meter was registering accurately.

A2114

5. At least once each month Seller shall verify the accuracy of Seller's measuring equipment and Buyer shall verify the accuracy of its check measuring equipment. If either party shall notify the other that it desires a special test of any measuring equipment, the parties shall cooperate to secure a prompt verification of the accuracy of such equipment. If either party at any time observes a variation between Seller's measuring equipment and Buyer's check measuring equipment, it will promptly notify the other party thereof and both parties will then cooperate to secure an immediate verification of the accuracy of such equipment. Each party shall give to the other notice of the

time of all tests of measuring equipment reasonably in advance of the holding of such tests in order that the other party may conveniently have its representative present.

6. If, upon test, any measuring equipment, including recording calorimeter, if installed, is found to be in error by not more than one percent (1%), previous records of such equipment shall be considered accurate in computing deliveries hereunder; but such equipment shall be adjusted at once to record correctly. If, upon test, any measuring equipment shall be found to be inaccurate by an amount exceeding one percent (1%), at a recording corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous recordings of all measuring equipment shall be corrected to zero error for any period which is known definitely or agreed upon, but in case the period is not known definitely or agreed upon

such correction shall be for a period extending over one-half (½) of the time elapsed since the date of last test, not exceeding a correction period of sixteen (16) days.

7. Each party shall preserve for a period of at least six (6) years all test data, charts and other similar records.

VII. Measurements

1. The term "MCF" shall mean one thousand (1,000) cubic feet, which quantity shall be the sales unit hereunder.

2. The volume of the gas delivered hereunder shall be determined as follows:

(a) The Unit of volume for the purpose of measurement shall be one (1) cubic foot of gas at a base temperature of sixty (60) degrees Fahrenheit and at a pressure of fifteen and twenty-five thousandths (15.025) pounds

per square inch absolute. Computation of volumes shall be made in accordance with the provisions of Louisiana R. S. 55:151-156, known as the "Standard Gas Measurement Law" of the State of Louisiana.

(b) The average absolute atmospheric pressure shall be assumed to be fourteen and seven-tenths (14.7) pounds to the square inch, irrespective of actual elevation or location of the point of delivery above sea level or variations in such atmospheric pressure from time to time.

(c) The temperature of the gas passing the meters shall be determined by the continuous use of a recording thermometer so installed that it may properly record the temperature of the gas flowing through

the meters. The arithmetical average of the temperature recorded each twenty-four (24) hour day shall be used in computing gas volumes for that date.

(d) Unless the parties hereto agree to the use of a spot test method, the specific gravity of the gas delivered hereunder shall be determined by the continuous use of an Acme recording gravitometer, or other standard gravitometer agreed upon by the parties hereto, so installed that it may properly record the specific gravity of the gas flowing through the meters. The arithmetical average of the specific gravity recorded each twenty-four (24) hour day shall be used in computing gas volumes for that date. If the parties hereto agree to the use of a spot test method, such spot test shall be made with an Edwards type of gas balance, or by such other method as shall be agreed upon between the parties. If the spot test method is used, the specific gravity of the gas delivered hereunder shall be determined once monthly, or as much oftener as is found necessary in practice. The regular monthly test

shall be taken at or near the end of each month and shall determine the specific gravity to be used in computation for the measurement of natural gas delivered during the next succeeding month or until changed by special test; the special test to be applicable from the day made through the remaining days in such month.

(e) The deviation of the gas from Boyle's Law at the pressures, temperatures, and specific gravities under which the gas is delivered hereunder, shall be read from the A. G. A. convenient operating tables of "Supercompressibility Factors for Natural Gas" which have been

developed from the basic tables contained in the A. G. A. Gas Measurement Committee Report No. 3. The accuracy of the basic tables shall be determined once a year, or more frequently when agreed to by the parties, by actual test using the Bureau of Standards type of equipment. When the deviation factors determined by actual tests agree with the basic factors within a tolerance of plus or minus two-tenths of one percent (0.2%) over the range of metering conditions, the basic table factors shall be used in computing the volume of gas delivered. When the deviation factors determined by actual tests do not agree with the basic factors within the prescribed tolerance, then beginning with the next billing period after the results of such actual tests adjustment of the basic factor for diluents based upon a chemical analysis of the gas involved, as provided in A. G. A. Gas Measurement Committee Report No. 3, shall be made, and such adjusted factors shall be used in computing the volume of gas delivered until additional tests have been made; provided the adjusted factors agree with the factors determined by actual tests within the prescribed tolerance. When the deviation factors determined by actual tests do not agree

with the adjusted factors within said tolerance, then beginning with the next billing period after the results of such tests, the actual test results shall be used in computing the volume of gas delivered until additional tests have been made.

VIII. QUALITY OF GAS

The gas delivered hereunder shall comply with the following quality requirements:

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1. *Heating Value:* The gas delivered hereunder shall have a gross heating value of not less than one thousand (1,000) BTUs per cubic foot and in the event Seller, by processing, shall reduce the gross heating value below said required minimum, then Seller shall restore such heating value to one thousand (1,000) BTUs per cubic foot. If the heating value of any gas tendered by Seller for delivery, determined as hereinafter provided, shall be below one thousand (1,000) BTUs per cubic foot and said deficiency shall not be the result of processing by Seller, Buyer shall have the option to:

(a) Refuse to accept delivery of such gas until Seller shall restore the gross heating value required for delivery; provided that if Buyer refuses to accept delivery and Seller is unable or fails to restore the gross heating value, then upon ninety (90) days' written notice from Seller of its desire to withdraw from this contract such sources of gas deficient in heating value, it shall be privileged to do so unless Buyer thereupon elects to continue to accept delivery thereof under Section (b) below, which election shall be final as to such particular sources of gas covered by Seller's notice of intention to withdraw; or

(b) Accept delivery thereof at a correspondingly reduced purchase price, which reduction in price shall be

determined by multiplying the amount otherwise payable by a fraction whose numerator shall be the deficiency in heating value per cubic foot below one thousand (1,000) BTUs and whose denominator shall be one thousand (1,000). The reduction shall be reflected on the statement rendered for the month, and the net amount shown shall be paid by Buyer for gas delivered by Seller during the month.

A2119

2. *Determination of Heating Value:*

The total heating value of the gas in British thermal units per cubic foot shall be determined by Seller at intervals of not more than ninety (90) days by means of some approved method of general use in the gas industry. Buyer shall have the right to determine, at such time or times as it may desire, the total heating value of the gas in British thermal units per cubic foot by means of some approved method of general use in the gas industry. Each party shall conduct at its expense the test or tests made by it. Each party shall give to the other notice of the time of all tests for determining the British thermal unit content of the gas to be conducted by such party reasonably in advance of making the test in order that the other party may conveniently have its representative present. Should there be any material variance between tests by Buyer and by Seller, a joint test will be run and will be controlling, effective from the first day of the calendar month preceding such joint test. The British thermal unit content per cubic foot shall be determined for a cubic foot of gas at a temperature of sixty degrees (60°) Fahrenheit when saturated with water vapor and at an absolute pressure equivalent to thirty inches (30″) of mercury at thirty-two degrees (32°) Fahrenheit.

3. *Other Specifications:* Seller agrees that the gas delivered hereunder:

(a) Shall be dehydrated by Seller and shall in no event have a water content in excess of seven (7) pounds of water per million cubic feet of gas measured at a pressure base of fourteen and seventh-three hundredths (14.73) pounds per square inch and at a temperature of sixty degrees (60°) Fahrenheit, as determined by dewpoint apparatus of a type approved by the Bureau of Mines.

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(b) Shall not contain more than one (1) grain of hydrogen sulphide per hundred (100) cubic feet of gas as determined by qualitative test after the presence of hydrogen sulphide has been indicated by qualitative test, which shall consist of exposing a strip of white filter paper recently moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of water to be exposed to the gas for one and one-half (1½) minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five (5) cubic feet per hour, the gas from the jet not impinging upon the test paper, and which qualitative test shall be deemed to be satisfied, if, after this exposure, the test paper is found not distinctly darker than a second paper freshly moistened with a solution not exposed to the gas.

(c) Shall not contain more than twenty (20) grains of total sulphur per one hundred (100) cubic feet of gas.

(d) Shall not contain in excess of:

(i) Three per cent (3%) by volume of carbon dioxide;

(A2120)

(ii) One per cent (1%) by volume of oxygen; or

(iii) Two-tenths (0.2) gallons per MCF of gas, of those certain liquefiable hydrocarbons commonly referred to as natural gasoline, as determined by absorption methods as prescribed from time to time by the Natural Gasoline Association of America.

4. Except as otherwise specifically provided to the contrary in this Article VIII, all measurements of gas required in this Article VIII shall be at a temperature of sixty degrees (60°) Fahrenheit and at an absolute pressure of fourteen and seventy-three hundredths (14.73) pounds per square inch. In addition to meeting the above specifications, the gas delivered hereunder shall be commercially free from dust, gums, gum forming constituents, or other liquid or solid matter which might become separated from the gas in the course of transportation through pipe lines.

A2121

IX. Price

1. Subject to the provisions of Paragraphs 2 and 3 below, the price to be paid by Buyer to Seller for gas delivered to Buyer or required to be paid for hereunder shall be as follows:

22.6 cents per MCF until November 1, 1958;

23.0 cents per MCF from November 1, 1958, to November 1, 1959;

23.4 cents per MCF from November 1, 1959, to November 1, 1960;

23.8 cents per MCF from November 1, 1960, to November 1, 1961;

24.2 cents per MCF from November 1, 1961, to November 1, 1962;

24.6 cents per MCF from November 1, 1962, to November 1, 1963;

25.0 cents per MCF from November 1, 1963, to November 1, 1964;

25.4 cents per MCF from November 1, 1964, to November 1, 1965;

25.8 cents per MCF from November 1, 1965, to November 1, 1966;

26.2 cents per MCF from November 1, 1966, to November 1, 1967;

26.6 cents per MCF from November 1, 1967, to November 1, 1968;

27.0 cents per MCF from November 1, 1968, to November 1, 1969;

27.4 cents per MCF from November 1, 1969, to November 1, 1970;

27.8 cents per MCF from November 1, 1970, to November 1, 1971;

28.2 cents per MCF from November 1, 1971, to November 1, 1972;

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28.6 cents per MCF from November 1, 1972, to November 1, 1973;

29.0 cents per MCF from November 1, 1973, to November 1, 1974;

29.4 cents per MCF from November 1, 1974, to November 1, 1975;

29.8 cents per MCF from November 1, 1975, to November 1, 1976;

30.2 cents per MCF thereafter.

2. Seller agrees to pay or cause to be paid all taxes, fees and assessments imposed on Seller with respect to the gas delivered hereunder prior to its delivery to Buyer, and Buyer agrees to pay or cause to be paid all taxes, fees and assessments imposed upon Buyer with respect to the gas delivered hereunder after its receipt by Buyer, provided, however, Buyer agrees to reimburse Seller for one hundred per cent (100%) of all sales, transaction, occupation, service, production, severance, gathering, transmission, export, or excise taxes, assessments, or fees levied, assessed, or fixed by the United States or any State or other Governmental authority and taxes of a similar nature or equivalent in effect (not including income, excess profits, capital stock, franchise, or general property taxes), lawfully imposed or which may be imposed upon and paid by Seller in respect of or applicable to the gas delivered hereunder and for which Seller may be liable in any month either directly or indirectly through any obligation to reimburse others, up to a total of one and three-tenths (1.3) cents per MCF. In the event the total of the above identified taxes, fees and

assessments imposed upon and paid by Seller with respect to the gas delivered hereunder exceeds one and three-tenths (1.3) cents per MCF, that portion in excess of one and three-tenths (1.3) cents per MCF shall for the purpose of this Agreement be considered a tax, fee or assessment hereafter levied, assessed or fixed in addition to or greater than those being levied, assessed or fixed on the date of this contract, as to which Buyer further agrees

to reimburse Seller for seven-eighths (7/8ths) thereof. In the event all or any part of such liability of Seller is not determined or not determinable by the end of any month, then such additional amount per MCF required in respect of such liability shall be determined quarterly and a statement setting forth the amount of such reimbursement for all months of such quarter shall be rendered to Buyer promptly following the end of such quarter and Buyer shall pay the amount due pursuant to such statement on or before thirty (30) days after receipt thereof.

3. Not less than twelve (12) months nor more than fifteen (15) months prior to each of the five (5) year periods of the contract, beginning on November 1, 1967 and November 1, 1972, respectively, Seller may request a determination by the parties hereto of the three (3) highest prices per MCF contracted to be paid at the beginning of each such five (5) year period by three (3) different interstate gas pipeline companies for gas produced from fields located within a radius of one hundred (100) miles from the point of delivery hereunder, under contracts with producers under which deliveries of gas are being made at the time of the determination, providing for deliveries over a period of time at least equal to

the remainder of the primary term of this Agreement, and upon substantially the same terms and conditions as those provided herein as to quality of gas, delivery pressure, gathering and compressing arrangements, measurement and taxes payable in respect of gas delivered. In making such determination and in comparing all prices payable under contracts, adjustments shall be made to compensate for differences in terms and conditions which are subject to mathematical correction. Contracts by interstate pipeline companies for the purchase from another pipe-

line company of gas which shall have been transported by such other pipeline company through its transmission pipeline system shall not be considered in such determination. If the parties are unable to agree before nine (9) months prior to the beginning of each such five (5) year period, the determination shall be made by arbitration in the manner provided in Article XV hereof. The arithmetical average of the three (3) highest prices, adjusted for purposes of comparison with this contract, shall be compared with the stated prices provided in Paragraph 1 of this Article IX for gas to be delivered during each year of such succeeding five (5) year period. If such average price is higher for any year or years of such five (5) year period, and Seller gives written notice to Buyer within ten (10) days from the date of such determination of its election to accept such higher price under the provisions of this Paragraph 3, it shall thereafter be the price paid in such year or years. If such average price is not higher than the stated price provided in Paragraph 1 of Article IX for any year or years of such five (5) year period, or if Seller fails to give such notice, no effect shall be given to this Paragraph 3 as to such year or years, and the stated

price provided in Paragraph 1 shall remain the effective price. In no case shall the provisions of Paragraph 2 of this Article IX providing for tax reimbursements be impaired hereby, but in making determinations and comparisons of prices hereunder appropriate adjustments shall be made in the prices payable under other contracts to compensate for any differences in the tax reimbursement provisions of such other contracts from the tax reimbursement provisions of this contract.

4. It is agreed that in the event the Federal Power Commission or any successor board or agency having jurisdiction over Buyer should at any time or times disallow any portion of any price increase provided for in Paragraph 3 of this Article IX as a part of Buyer's recoverable cost of service or allowable operating expense in any rate proceeding affecting Buyer, then only that portion of such increase which is not specifically disallowed may be received by Seller.

(a) It is further agreed that if in any such rate proceeding of Buyer the right of Buyer to receive upon resale of gas delivered by the Seller any portion of such price increase provided for in Paragraph 3 of this Article IX shall have been suspended pending the outcome of such rate proceeding, then Buyer shall have a similar right to suspend hereunder the payment of such suspended portion of such price increase to Seller. If Buyer shall have itself commenced receiving any portion of said price increase so suspended by making its rates

effective under bond or corporate assurance in accordance with the orders of such regulatory body, then Seller shall likewise be entitled to receive such increase from Buyer upon furnishing similar bond or corporate assurance for repayment to Buyer of such amounts of the increase as finally may be specifically disallowed. Upon final determination of such rate proceeding, Buyer shall pay to Seller any portion of said price increase which Seller shall then be entitled to receive in accordance with the provisions of this Paragraph 4.

(b) It is agreed that in the event the Federal Power Commission or any successor board or agency shall continue to assert or hereafter assert jurisdiction over or

the power to regulate the receipt by Seller of any portion of the price increase which may be payable to Seller pursuant to the provisions of Paragraph 3 and 4 of this Article IX, then the application of the entirety of this Paragraph 4 shall be suspended and of no force and effect during the continuance of such assertion of jurisdiction or the right of regulation.

X. Billing and Payment

1. On or before the tenth (10th) day of each calendar month, Seller shall render or cause to be rendered to Buyer, at its office designated in or pursuant to Article XVI hereof a statement showing the total quantity of gas delivered during the preceding calendar month to Buyer by all parties delivering gas to Buyer through common facilities with Seller. On or before the twentieth (20th) day of each calendar month, Seller shall render or cause to be rendered to Buyer a statement for payment allocating

to each Seller its proportionate share of such total quantity plus its proportionate part of the total of the average daily deficiency, if any, in takings of available gas below seventy-five per cent (75%) of the Daily Contract Quantity during such preceding month not excused by force majeure or Seller's failure or inability to deliver the quantities requested. Buyer shall make payment to Seller at its office designated in or pursuant to Article XVI hereof by check on or before the fifteenth (15th) day following receipt of each such statement for payment, but in no event no earlier than the twenty-fifth (25th) day of the month.

2. If any overpayment or underpayment in any form whatsoever shall at any time be found, Seller shall refund the amount of the overpayment or Buyer shall pay the

amount of the underpayment within thirty (30) days after final determination thereof. Interest on the amount of any overpayment or underpayment shall accrue at the rate of six per cent (6%) per annum.

3. If Buyer shall fail in any year of the term of this Agreement to take the quantity of gas Buyer is obligated to take under the provisions of Article III of this Agreement, then Seller may within thirty (30) days after the end of such year, render or cause to be rendered a bill to Buyer for the amount due Seller by reason of such deficient takings and Buyer shall make payment to Seller within fifteen (15) days after receipt of such bill, in the manner set forth in Paragraph 1 of this Article X, at the weighted average price per MCF in effect hereunder during the year in which such deficiency arose. In computing

the amount due Seller for any deficiency in takings by Buyer occurring during any year, the following quantities shall be deducted from such deficiency:

(a) The total of the quantities of gas not taken but paid for during such year in accordance with the provisions of Subparagraph (c) of Paragraph 6 of Article III hereof.

(b) The total of the quantities of gas which Buyer requests (up to a daily maximum of one hundred twenty-five per cent (125%) of the Daily Contract Quantity) and which Seller fails to deliver on any day or days during such year; provided that deliveries within a tolerance of two per cent (2%) of the quantities requested by Buyer for any one day shall not be considered a failure to deliver hereunder if Seller shall deliver not less than the total quantity requested by Buyer in such monthly period. No

deduction shall be made for any reduction in Seller's deliveries resulting from Buyer's failure at any time to file nominations or forecasts with the Louisiana Department of Conservation for the full quantity of gas which Buyer thereafter requests Seller to deliver.

(c) The total of the quantities of gas which Buyer is unable to take on any day or days during such year by reason of force majeure as defined and referred to in Article XI hereof.

(d) The volume of gas that results from any reduction in the annual total of Seller's allowable for the wells covered hereby below the annual quantity of gas Buyer is obligated to take or pay for during such year, which is not included in any deduction made pursuant to Subparagraph (b)

of this Paragraph 3, provided that no deduction shall be made for any such reduction in Seller's allowable to the extent that such reduction results from Buyer's failure at any time to file nominations or forecasts with the Louisiana Department of Conservation for such total annual quantity.

XI. Force Majeure

1. In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, other than to make payments due hereunder, it is agreed that on such party giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused

but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accidents to machinery, gas processing plant or lines of pipe, the necessity for making repairs to or alterations of machinery, gas processing plant or lines of pipe, freezing of wells or lines of

pipe, partial or entire failure of wells or sources of supply of gas, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a) in those instances where either party hereto is required to obtain servitudes, rights of way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses, and (b) in those instances where either party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies,

permits and permissions. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty. If at any time Buyer is unable to take delivery of gas hereunder during any period in excess of fifteen (15) days due to force majeure affecting Buyer, Seller shall have the right to sell or otherwise dispose of such gas elsewhere

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in accordance with the terms and provisions of Paragraph 7 of Article II of this Agreement. In the event at any time after the initial delivery of gas hereunder either party is unable to perform its obligations as a result of force majeure as herein provided for a period of one hundred and eighty (180) days or more, the other party may terminate this Agreement by giving the party affected by such force majeure written notice of its intention to terminate this Agreement upon the expiration of thirty (30) days following the date of such notice, unless the party affected by such force majeure shall theretofore be fully performing hereunder.

2. Nothing in this Article XI shall impair the rights of cancellation provided for in Article I hereof, except to the extent specified in said Article I.

XII. DEFAULT

It is covenanted and agreed that if either party hereto shall fail to perform any of the covenants or obligations imposed upon it under and by virtue of this Agreement,

then in such event the other party hereto may at its option terminate this Agreement by proceeding as follows: The party not in default shall give written notice to the party in default stating specifically the cause for terminating this Agreement and declaring it to be the intention of the party giving the

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notice to terminate the same; thereupon the party in default shall have thirty (30) days after the giving of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating the Agreement, and if within said period of thirty (30) days the party in default does so remedy or remove said cause or causes and fully indemnify the party not in default for any and all consequences of such breach, then such notice shall be withdrawn and this Agreement shall continue in full force and effect. In case the party in default does not so remedy or remove the cause or causes and indemnify the party giving the notice for any and all consequences of such breach, within said period of thirty (30) days, then at the option of the party giving the notice, this Agreement shall become null and void from and after the expiration of said period. Any cancellation of this Agreement pursuant to the provisions of this Article XII shall be without prejudice to the right of Seller to collect any amounts then due Seller for natural gas delivered, or for which Buyer was obligated to pay, whether or not taken, prior to the time of cancellation and shall be without prejudice to the right of Buyer to receive any gas for which it has paid but which it has not received, although entitled thereto, prior to the time of cancellation, provided that same shall be taken in accordance with the applicable provisions of this Agreement for quantities and rates of flow, and without waiver of any remedy to

which the party not in default may be entitled for violations of this Agreement. Seller may terminate Buyer's right to receive gas paid for but not taken by repaying the sums theretofore paid by Buyer for such undelivered gas.

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XIII. Term

This Agreement shall be effective from the date hereof and shall continue and remain in full force and effect for a primary term of twenty (20) years from the date upon which Seller commences the initial delivery of gas to Buyer hereunder, provided that if such initial delivery commences on a date other than November 1st, then said primary term shall be twenty-one (21) years from such initial delivery date, and as long thereafter as said primary term may be extended pursuant to Paragraph 4 of Article II hereof.

XIV. Warranty of Title

Seller hereby warrants the title to all gas delivered by Seller to Buyer hereunder, the right to sell the same and that it is free from all liens and adverse claims, and agrees, if notified thereof by Buyer, to indemnify Buyer against all suits, actions, debts, accounts, damages, costs, losses, and expenses arising from or out of any adverse legal claims of any and all persons to or against said gas. Seller agrees to pay or cause to be paid all taxes and assessments levied on the gas prior to its delivery to Buyer, and to pay or cause to be paid to the parties entitled thereto all royalties, overriding royalties or like charges against said gas or the value thereof. During the pendency of litigation involving Seller's right to deliver any gas sold hereunder from any tract, Seller may at its election make no deliveries of gas from such tract. Seller

shall not be liable for the loss of any of the leaseholds and/or lands covered hereby by reason of any title failure. Seller makes no warranty, guaranty or covenant as to the quantity of its reserves of gas under its lands or leaseholds subject hereto.

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XV. ARBITRATION

It is recognized that the determination of any controversy arising between Buyer and any seller of gas to Buyer from the Rayne Field involving matters of fact with respect to measurement of gas, redetermination of reserves or determination of prices may necessarily affect the rights and obligations between Buyer and the other sellers of gas to Buyer in the Rayne Field. Accordingly it is agreed that the rights and obligations of all sellers of gas to Buyer from the Rayne Field having any interest in any such controversy shall be included in the determination thereof. Any such controversy involving solely the determination of matters of fact with respect to measurement of gas, determination of prices or redetermination of reserves shall be resolved by arbitration as follows:

If Buyer or any seller of gas to Buyer from the Rayne Field pursuant to a contract containing the same arbitration provisions desires such an arbitration, it shall give written notice of such desire for arbitration to the other party to the contract and to all other such sellers of gas to Buyer from the Rayne Field. Such sellers and Buyer shall within fifteen (15) days after the giving of such notice agree upon and designate in writing a disinterested consultant or consulting firm of established reputation and experience in the field of the particular problem to be submitted to arbitration who shall serve as arbitrator.

If the parties are unable in such fifteen (15) day period to agree upon and select an arbitrator, the party originally giving

the notice shall thereupon apply to the person who is then secretary of American Petroleum Institute for the appointment of such arbitrator. Each of the parties shall be privileged to submit to the secretary of American Petroleum Institute a list of consultants acceptable to it. Such an appointment shall be made within fifteen (15) days after reference to the secretary of American Petroleum Institute.

The arbitrator chosen by the parties, or pursuant to application for appointment by the secretary of American Petroleum Institute, shall fix a reasonable time and place for the hearing at which time all interested parties may submit such evidence as they see fit. Such arbitrator shall determine the matter submitted to him pursuant to the provisions of this Agreement and the other contracts involved in such arbitration. The decision of such arbitrator shall be set forth in writing and shall be final and binding on all interested parties. Any question referred to arbitration which is not determined within three (3) months from the date of appointment of the arbitrator shall be withdrawn from arbitration and such arbitration shall be terminated without prejudice. The costs of the arbitration arbitration shall be paid one-half (½) by Buyer and one-half (½) by the several sellers in the proportions of their respective daily contract quantities in effect at the time the arbitration was requested.

XVI. Addresses

Until Buyer is otherwise notified in writing by Seller, the address of Seller is and shall remain Continental Oil Company, Post Office Box 2197, Houston, Texas, Attention Regional Manager of Production, Southern

Region, and, unless Seller is otherwise notified in writing by Buyer, the address of Buyer is and shall remain Post Office Box 1612, Shreveport, Louisiana. All notices required to be given in writing hereunder shall be deemed sufficiently given when and if deposited in the United States mail postage prepaid and addressed to the respective parties at such addresses or such other addresses as the parties respectively shall designate by written notice.

XVII. MISCELLANEOUS

1. No waiver by either party hereto of any one or more defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any other default or defaults, whether of a like or of a different character.

2. Nothing in this contract shall be construed to require any party to waive its right to assert lack of jurisdiction of the Federal Power Commission over the sale of gas hereunder, or over any of Seller's facilities used for the production or delivery of such gas.

3. In the event Seller has gas available for sale in or near the Rayne Field from leaseholds and/or lands which are not described in Exhibits "A" and "B" attached hereto or if Seller has gas available for sale from formations or reservoirs below the Nodosaria "A" Sand, Seller shall have the right but never the obligation to amend Exhibits "A" and "B" so as to include among those subject to this Agreement the leaseholds and/or lands and/or formations or reservoirs from which such gas is produced. In the event Seller shall exercise such right, Buyer and Seller shall conduct a joint study to determine the quantity of economically recoverable gas,

attributable to Seller's interest, which will be available for delivery to Buyer hereunder, and contained in the portions of the various gas and/or oil bearing formations or reservoirs described in such amendment to Exhibits "A" and "B" and/or underlying the leaseholds and/or lands owned or controlled by Seller and described in such amendment to Exhibits "A" and "B". If Buyer and Seller are unable to agree upon the quantity of such gas reserves within sixty (60) days after the execution of such amendments to Exhibits "A" and "B", then the determination of such quantity shall be submitted to and determined by arbitration in the manner provided in Article XV hereof. Effective as of the date of initial delivery of gas from such additional leaseholds and/or lands and/or formations or reservoirs, the Daily Contract Quantity then in effect under Article III hereof shall be increased by a quantity equal to one thousand (1,000) MCF for each seven million three hundred thousand (7,300,000) MCF of gas so estimated or determined to be contained in such additional gas reserve of Seller. The initial delivery of such additional gas shall commence upon the date of the completion of such reserve estimate or determination, or the date of completion of any facilities required for such delivery, whichever shall occur later. It is further agreed that upon the exercise by Seller of the right to include such additional gas reserve hereunder, each of the parties shall proceed with due diligence in a good faith effort to obtain such governmental authorizations and certificates of public convenience and necessity, if any, as may be necessary to enable it to perform its obligations under this Agreement with respect to such additional gas. Upon receipt and acceptance by

both Buyer and Seller of any such necessary governmental authorizations and certificates of public convenience and necessity upon terms and conditions satisfactory to both parties, or if no such authorizations or certificates are required, then upon the date of execution of the aforesaid amendment to Exhibits "A' and "B", each of the parties shall proceed with due diligence to construct any facilities necessary to enable such party to deliver or receive, as the case may be, such additional gas at the point of delivery specified in Article IV hereof. In the event either of the parties hereto shall fail to obtain any such governmental authorizations and certificates of public convenience and necessity upon terms and conditions satisfactory to both parties or if either party shall fail to construct any necessary facilities to deliver or receive such gas within twelve (12) months after the date of the execution of the aforesaid amendment to Exhibits "A" and "B", then either party may, at its election, at any time thereafter give written notice to the other party of its intention to cancel said amendment to Exhibits "A" and "B" at least thirty (30) days in advance of such date of cancellation, at which time said amendment to Exhibits "A" and "B" shall become null and void ad initio; provided, however, if pending such thirty (30) days' notice, all such necessary authorizations or certificates of public convenience and necessity shall be secured and accepted and all necessary facilities for the delivery and receipt of such additional gas shall have been constructed, such notice shall be voided and of no force or effect.

4. This Agreement shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and assigns of the respective parties hereto and shall constitute a real right and covenant running with

the lands and leasehold estates covered hereby, and shall be binding upon any purchaser of Buyer's transmission system and upon any purchaser of the properties of Seller which are subject to this Agreement; and Seller and Buyer both agree that no sale of said properties of Seller or any part thereof or of all or substantially all of Buyer's said system or of that portion of Buyer's system required to transport the gas sold hereunder to its ultimate markets shall be made unless the purchaser thereof shall assume and agree to be bound by this Agreement insofar as the same shall affect and relate to the property or interest sold or conveyed. It is agreed, however, that nothing contained in this paragraph shall in any way prevent either party hereto from pledging or mortgaging its rights hereunder for security of its indebtedness.

5. It is understood and agreed that Buyer has executed this Agreement at the prices and upon the other terms and provisions set forth herein upon the condition that within thirty (30) days from the date hereof Buyer will be able to obtain contracts (including this contract) providing for the purchase by Buyer of gas from a total of not less than seven hundred thirty million (730,000,000) MCF of sellers' gas reserves in the Rayne Field as established by the initial determinations of such reserves set forth in said contracts. In the event Buyer is unable to obtain said contracts within thirty (30) days from the date hereof, then Buyer shall have the right and option to terminate and cancel this Agreement by giving Seller written notice of such termination and cancellation within the next succeeding fifteen (15) days, whereupon the parties hereto shall be relieved of all liability hereunder.

A2140

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in two (2) originals on the day and year first above written.

TEXAS EASTERN TRANSMISSION CORPORATION

By /s/ Mills Cox
Vice President

BUYER

ATTEST:
By /s/ J. G. Lawhon
Assistant Secretary

(SEAL)

WITNESSES:
/s/ Elsie Powell
/s/ Geneva Terry

CONTINENTAL OIL COMPANY
By /s/ O. L. Fisher
Vice President

SELLER

ATTEST:
By /s/ Richard Jackson
Assistant Secretary

(SEAL)

WITNESSES:
/s/ Iris R. Stremmel
/s/ Marjorie Hurley

A2141

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned Notary Public in and for the State and County aforesaid, on this day came and appeared Elsie Powell, who

being by me duly sworn, deposes and says that she was one of the subscribing witnesses to the above and foregoing instrument and that the same was signed by Mills Cox, Vice President of Texas Eastern Transmission Corporation, in her presence and in the presence of the other subscribing witness.

/s/ Elsie Powell
Subscribing Witness

Sworn to and subscribed before me this 1st day of February, 1957.

/s/ Loraine Stratton
Notary Public, in and for
Harris County, Texas

(SEAL)

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned Notary Public in and for the State and County aforesaid, on this day came and appeared Marjorie Hurley, who being by me duly sworn, deposes and says that she was one of the subscribing witnesses to the above and foregoing instrument and that the same was signed by O. L. Fisher in her presence and in the presence of the other subscribing witness.

/s/ Marjorie Hurley
Subscribing Witness

Sworn to and subscribed before me this 6th day of February, 1957.

/s/ Dorothy J. Howell
Notary Public, in and for
Harris County, Texas

(SEAL)

My Commission Expires June 1, 1957.

A2142

EXHIBIT "A"
TO
GAS PURCHASE CONTRACT
TEXAS EASTERN TRANSMISSION CORPORATION
(BUYER)

RAYNE FIELD, ACADIA PARISH, LOUISIANA

Seller's leaseholds and/or lands located within the hatched lines of the page designated as 1 of Exhibit "B" hereof are included within the Homeseekers "E" Sand Units and/or Nodosaria "A" Sand Units listed below as established by the following orders issued by the State of Louisiana Department of Conservation:

I.

By order No. 307-A issued by the State of Louisiana Department of Conservation and effective from and after March 1, 1956, filed for record in Conveyance Records of Acadia Parish, Louisiana, under entry No. 279582 on March 14, 1956, and by order No. 307-B issued by the State of Louisiana Department of Conservation and effective from and after October 1, 1956, filed for record in Conveyance Records of Acadia Parish, Louisiana, under entry No. 284230, and by reference to Exhibits attached thereto and made a part thereof; the rules and regulations therein provided for the establishment of the following listed drilling units for the Homeseekers "E" Sand underlying the North Fault Block, and the Homeseekers "E" Sand underlying the South Fault Block, Rayne Field, Acadia Parish, Louisiana:

(A2142)

North Fault Block

1. Homeseekers "E" Sand Unit No. 1—North Fault Block containing 365 acres, more or less.
2. Homeseekers "E" Sand Unit No. 2—North Fault Block containing 345 acres, more or less.
3. Homeseekers "E" Sand Unit No. 3—North Fault Block containing 345 acres, more or less.
4. Homeseekers "E" Sand Unit No. 4—North Fault Block containing 405 acres, more or less.
5. Homeseekers "E" Sand Unit No. 5—North Fault Block containing 345 acres, more or less.

A2143

South Fault Block

1. Homeseekers "E" Sand Unit No. 6—South Fault Block containing 345 acres, more or less.
2. Homeseekers "E" Sand Unit No. 7—South Fault Block containing 345 acres, more or less.
3. Homeseekers "E" Sand Unit No. 8—South Fault Block containing 345 acres, more or less.

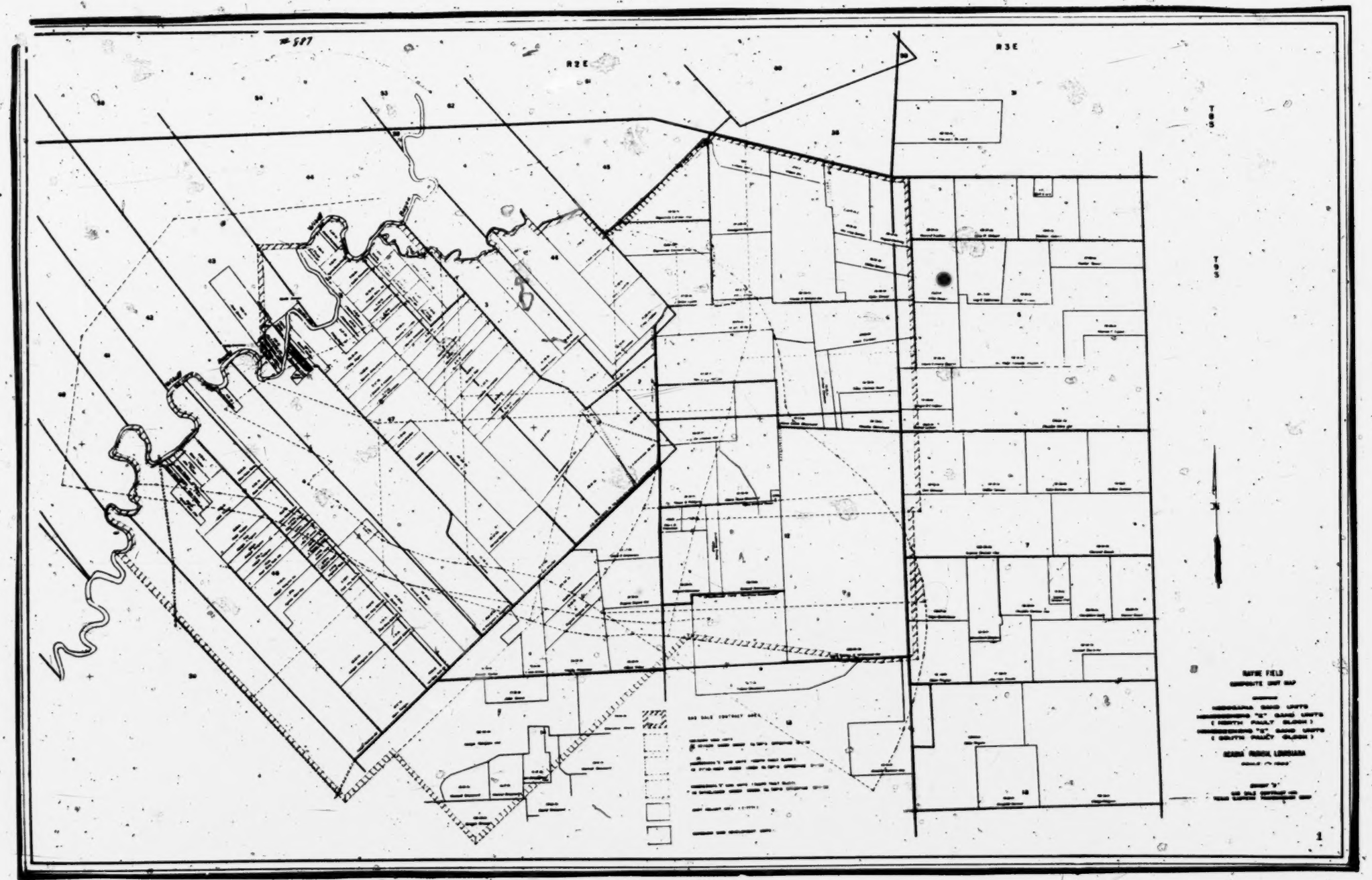
II.

By order No. 307 issued by the State of Louisiana Department of Conservation and effective from and after May 1, 1955, filed for record in Conveyance Records of Acadia Parish, Louisiana, under Original Act No. 272941 on May 4, 1955, as amended by Department of Conservation order effective from and after June 29, 1955, filed for record in Conveyance Records of Acadia Parish, Louisiana, under Original Act No. 274549 on July 14, 1955, and by Order No. 307-B issued by the State of Louisiana Department of Conservation and effective from and after

October 1, 1956, filed for record in Conveyance Records of Acadia Parish, Louisiana, under Original Act No. 284288, on October 11, 1956, and by reference to Exhibits attached thereto and made a part thereof; the rules and regulations therein provided for the establishment of the following listed drilling units for the Nodosaria "A" Sand, Rayne Field, Acadia Parish, Louisiana:

1. Nodosaria "A" Sand Unit No. 1—containing 345 acres, more or less.
2. Nodosaria "A" Sand Unit No. 2—containing 345 acres, more or less.
3. Nodosaria "A" Sand Unit No. 3—containing 345 acres, more or less.
4. Nodosaria "A" Sand Unit No. 4—containing 345 acres, more or less.
5. Nodosaria "A" Sand Unit No. 5—containing 345 acres, more or less.
6. Nodosaria "A" Sand Unit No. 6—containing 345 acres, more or less.
7. Nodosaria "A" Sand Unit No. 7—containing 345 acres, more or less.
8. Nodosaria "A" Sand Unit No. 8—containing 345 acres, more or less.
9. Nodosaria "A" Sand Unit No. 9—containing 345 acres, more or less.

(A2144)



A2601

Docket No. G-12446

Hearing Ex. No. M-10

TEXAS EASTERN TRANSMISSION CORPORATION

ACCOUNTING EXHIBIT

(1) Not applicable—The facilities to be acquired have not been devoted to public service.

(2) Texas Eastern proposes to charge to Account 100.1 —Gas Plant in Service, sub-account 330.2 Natural Gas Producing Leaseholds the cash payment of $12,420,500. Reference is made to Tabulation III on Page No. 3 of this Exhibit.

(3) Not applicable.

(4) The facilities to be acquired have no related depreciation, depletion and amortization.

(5) See paragraphs (2) and (4).

(6) Not applicable.

(7) Not applicable.

(8) Not applicable.

(9) Proposed accounting. Texas Eastern proposes to charge to Account 100.1, Gas Plant in Service, the initial cash payment of $12,420,500. This amount will be amortized on the unit cost per MCF applicable to the net working interest reserves (783,498,800 MCF) shown in Tabulation I on Page 3 of Hearing Exhibit No. M-10.

Also see Hearing Exhibit No. M-8, Page 4. The entry will take the following form:

Dr. 503.2—Amortization and Depletion of Producing Natural Gas Land and Land Rights (1) $474,700

Cr. 250.2—Reserve for Amortization and Depletion of Producing Natural Gas Land and Land Rights (1) $474,700

(1) Amounts shown on annual basis as developed in Hearing Exhibit M-8 Page 4.

The non-interest bearing notes shown in Tabulation III on Page 3 of Hearing Exhibit No. M-10 as they mature and are paid will be charged to Account No. 146—Other Deferred Debits. As deliveries are taken from the Rayne Field Account No. 146—Other Deferred Debits will be credited and Account No. 503.2—Amortization and Depletion of Producing Natural Gas Land and Land Rights will be debited. The entry will be based on the unit cost per MCF for deliveries taken from the Rayne Field. See Hearing Exhibit No. M-8, Page 4. The entry will take the following form:

Dr. 503.2—Amortization and Depletion of Production Natural Gas Land and Land Rights (1) $4,677,500

Cr. 146—Other Deferred Debits (1) $4,677,500

(1) Amounts shown on annual basis as developed in Hearing Exhibit M-8 Page 4.

A2603

TEXAS EASTERN TRANSMISSION CORPORATION

TABULATIONS

	MCF (15.025 PSIA)	AMOUNT	AVERAGE PRICE PER MCF
TABULATION I			
Ownership in Rayne Field			
Working Interest of the Four Sellers (79.14129%)	783,498,800		
Royalty and Minority Interests (20.85871%)	206,501,200		
Total Rayne Field (100.00000%)	990,000,000		
TABULATION II			
Debt to Texas Eastern			
Working Interest	783,498,800	$134,395,700	17.15¢
Royalty and Minority Interests	206,501,200	46,669,300	22.60¢
Grand Total	990,000,000	$181,065,000	18.29¢
TABULATION III			
Method of Payment—Working Interest Only			
Total Amount		$134,395,700	
Less: Initial Cash Payment		12,420,500	
Remainder (Aggregate amount of notes)		$121,975,200	
Payment on Notes—Annual Amounts			
1st and 2nd Years		$ 6,219,600	
3rd through 15th Years		$ 8,015,300	
16th Year (8 months)		$ 5,337,000	

A2604

Hearing Ex. No. M-11

LAW OFFICES
HARGROVE, GUYTON AND VAN HOOK
TEXAS EASTERN BUILDING
SHREVEPORT, LOUISIANA

February 3, 1959

Texas Eastern Transmission Corporation
Texas Eastern Building
Shreveport, Louisiana

Gentlemen:

You have requested our advice with regard to your prospective rights as owner of certain leasehold interests in the Rayne Field, Acadia Parish, Louisiana. Pursuant to your request, we have examined that certain Lease Sale Agreement dated December 4, 1958, together with the Assignment and Conveyance attached thereto, between Continental Oil Company et al. as First Parties and Louisiana Gas Corporation as Second Party, as well as that certain Lease Purchase Agreement dated December 4, 1958, between Louisiana Gas Corporation and Texas Eastern Transmission Corporation. We have also examined all of the leases affected by said instruments except those certain leases embraced by the Navarre-Klumpp "D" Sand Unit, more particularly described on pages 48 through 56 of Exhibit "A" to Exhibit 1 attached to the Lease Sale Agreement first hereinabove described. As to said Navarre Unit, we have examined title opinions by the attorneys who examined such leases; and we are confident that said leases do not contain any provisions which would abrogate or conflict with the opinions hereinafter expressed. It is our opinion that all of the leases affected by said instruments are "commercial leases" as that term is used in the oil

and gas industry, and that the owners thereof have the rights hereinafter set forth.

In Louisiana, under a commercial oil, gas and mineral lease similar to those above referred to, the lessee (including his successors, assigns or sublessees) has the exclusive right to go upon the leased premises, to explore for oil and gas by drilling, to develop the premises for the production of oil and gas, to produce such minerals, and, upon production, to reduce such minerals to possession and ownership, and to market same, subject to the payment of such royalties as the lessor may have reserved and of such overriding royalties and production payments as the lease may be burdened with. The lease itself, immediately upon its execution, does not convey title to the subsurface minerals to the lessee; but it does convey the exclusive right to explore for and produce minerals, and, upon production, to reduce the minerals to possession and ownership and to market same. (See *McCoy* v. *United Gas Public Service Co.*, U.S.D.C., W. D. La., 57 F. Supp. 444; *Dixon* v. *American Liberty Oil Co.*, 226 La. 911, 77 So. 2d 533 (1954) and cases cited therein).

The Louisiana courts have consistently recognized and affirmed

the grant of a mineral lease for a term of years and as long thereafter as oil, gas and other minerals shall be produced from the leased premises in paying quantities. (See *Sam George Fur Co. v. Arkansas Louisiana Pipeline Co.*, 177 La. 284, 148 So. 51). The rights of a mineral lease owner, which were the subject of much confusion in early Louisiana mineral law, have been substantially clarified and strengthened by Louisiana Revised Statutes 9:1105, which classified mineral leases as real rights and incorporeal immovables, for purposes of both substantive and procedural law.

(A2605)

The "Assignment and Conveyance" hereinabove referred to is valid in form and contains no provisions repugnant to the laws of Louisiana. Assuming its execution and the transfer of Louisiana Gas Corporation's interests to Texas Eastern pursuant to their "Lease Purchase Agreement" dated December 4, 1958, Texas Eastern will succeed to all rights of the grantors in said "Assignment and Conveyance" with respect to all gas produced from all formations, between the surface of the ground and the base of the Nodosaria "A" Sand, subject only to the payment of such royalties, overriding royalties and production payments as have been provided for by contract. Texas Eastern will, therefore, be the owner of all gas so produced and saved, when and as it is produced.

Yours very truly,

HARGROVE, GUYTON AND VAN HOOK
By /s/ Elmon W. Holmes

A2606

DEGOLYER AND MACNAUGHTON
5625 DANIELS AVENUE
DALLAS, TEXAS

TEXAS EASTERN TRANSMISSION CORPORATION

ESTIMATED RESERVES OF NATURAL GAS
in the
RAYNE FIELD
ACADIA PARISH, LOUISIANA
as of
JANUARY 1, 1959

A2609

RAYNE FIELD, ACADIA PARISH, LOUISIANA
ESTIMATED GAS RESERVES
DEDICATED
to
TEXAS EASTERN TRANSMISSION CORPORATION
as of
JANUARY 1, 1959

(All volumes expressed in MMcf at 14.73 psia and 60 degrees Fahrenheit)

Line	Name of Field (b)	Reservoir (c)	Proved Reserves in Place (d)	Salable Proved Reserves (e)
1	Rayne	Klumpp "A"	16,805	14,198
2		Klumpp "D"	81,003	70,033
3		Klumpp "E"	20,889	18,088
4		Homeseekers "E"	370,693	307,140
5		Nodosaria "A" (North Seg.)	214,508	165,150
6		Nodosaria "A" (South Seg.)	497,905	414,162
7	TOTAL		1,201,803	988,771

RAYNE FIELD, ACADIA PARISH, LOUISIANA
ESTIMATED GAS RESERVES
DEDICATED
to
TEXAS EASTERN TRANSMISSION CORPORATION
as of
JANUARY 1, 1959

(All volumes expressed at 14.73 psia and 60 degrees Fahrenheit)

Line (a)	Item (b)	Units (c)	Klumpp "A" Sand (d)	Klumpp "D" Sand (e)	Klumpp "E" Sand (f)	Homeseekers "E" Sand (g)
1	Type of Gas		Non-Associated	Non-Associated	Non-Associated	Non-Associated
2	Average Depth	Feet	10,740	11,250	11,360	12,620
3	Number of Well Completions		1	3	0	5
4	Estimated Productive Area	Acres	737	1,230	698	2,005
5	Estimated Average Thickness	Feet	13.2	29.6	11.7	64.2
6	Estimated Reservoir Volume	Acre-Feet	9,725	36,392	8,144	128,806
7	Estimated Average Porosity	Percent	23.8	21.8	24.9	24.6
8	Estimated Interstitial Water	Percent	34.0	22.5	22.7	19.0
9	Reservoir Temperature	Degrees, F.	222	230	232	252
10	Initial Reservoir Pressure	Psia	4,835	6,855	6,868	8,918
11	Terminal Reservoir Pressure	Psia	515	515	515	515
12	Compressibility Factor, Initial Conditions		0.990	1.150	1.145	1.310
13	Compressibility Factor, Terminal Conditions		0.962	0.965	0.965	0.973
14	Initial Gas in Place per Acre-Foot	Mcf	1,728	2,245	2,565	2,926
15	Terminal Gas in Place per Acre-Foot	Mcf	189	201	228	228
16	Estimated Initial Gas in Place.	MMcf	16,805	81,700	20,889	376,886
17	Estimated Terminal Gas in Place	MMcf	1,838	7,315	1,857	29,368
18	Estimated Initial Recoverable Gas	MMcf	14,967	74,385	19,032	347,518
19	Estimated Cumulative Production to January 1, 1959	MMcf	0	697	0	6,193
20	Remaining Gas in Place on January 1, 1959	MMcf	16,805	81,003	20,889	370,693
21	Estimated Remaining Recoverable Gas	MMcf	14,967	73,688	19,032	341,325
22	Estimated Shrinkage and Fuel Losses	MMcf	769	3,655	944	25,565
23	Estimated Salable Gas Reserves	MMcf	14,198	70,033	18,088	315,760
24	Reserves Dedicated to Texas Eastern Transmission Corporation					
25	Dedicated Acre-Feet		9,725	36,392	8,144	125,291
26	Percent of Total Reservoir		100.00	100.00	100.00	97.27
27	Salable Gas Reserve	MMcf	14,198	70,033	18,088	307,140

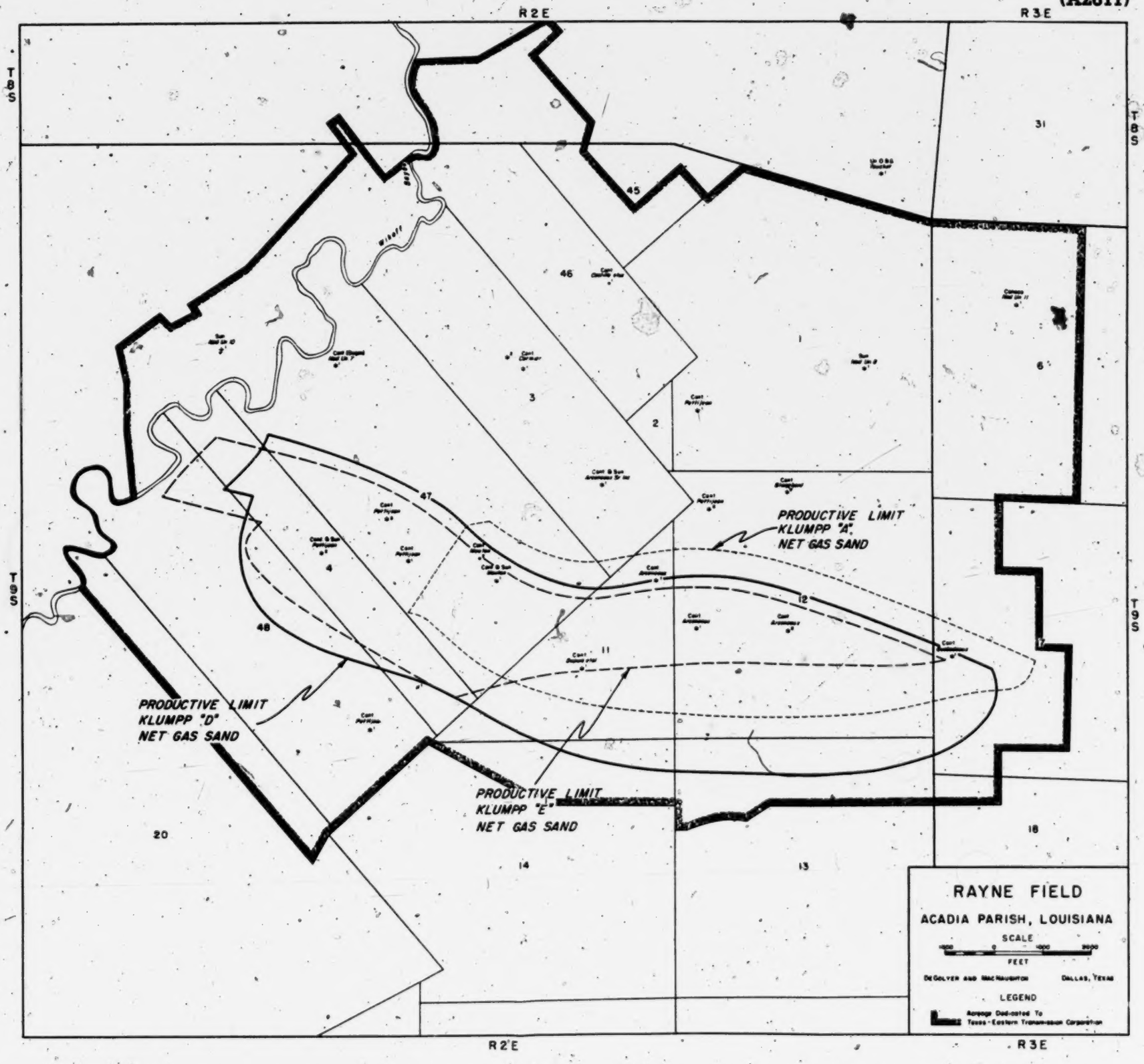
RAYNE FIELD, ACADIA PARISH, LOUISIANA
ESTIMATED GAS RESERVES
DEDICATED
to
TEXAS EASTERN TRANSMISSION CORPORATION
as of
JANUARY 1, 1959

(A2610)

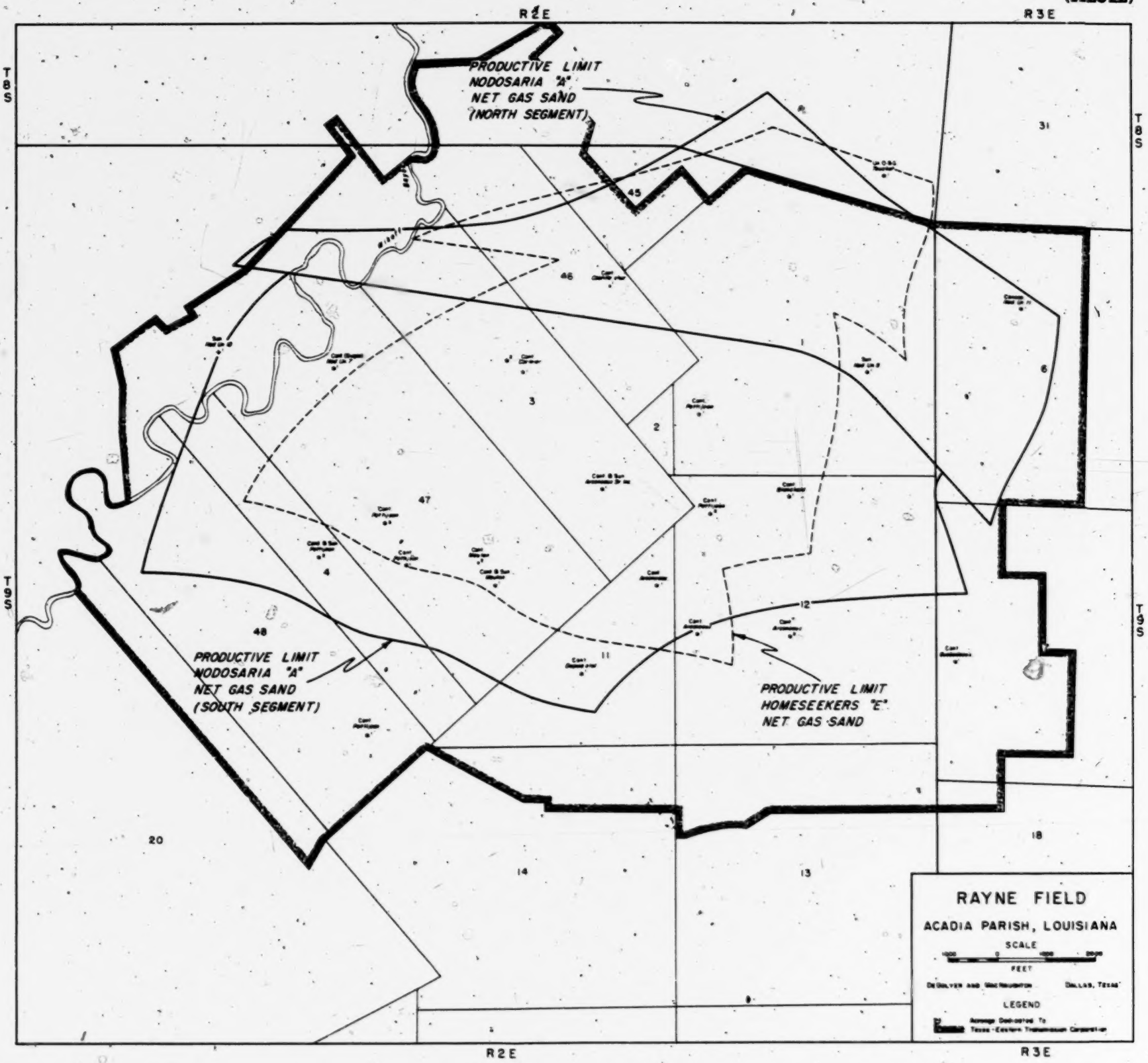
(All volumes expressed at 14.73 psia and 60 degrees Fahrenheit)

Klumpp "A" Sand (d)	Klumpp "D" Sand (e)	Klumpp "E" Sand (f)	Homeseekers "E" Sand (g)	Nodosaria "A" Sand North Seg. (h)	Nodosaria "A" Sand South Seg. (i)	Nodosaria "A" Sand Subtotal (j)	TOTAL (k)
Non-Associated	Non-Associated	Non-Associated	Non-Associated	Non-Associated	Non-Associated		
10,740	11,250	11,360	12,620	13,700	13,640		
1	3	0	5	2	7		
737	1,230	698	2,005	1,093	2,174		
13.2	29.6	11.7	64.2	71.3	84.3		
9,725	36,392	8,144	128,806	77,938	183,190		
23.8	21.8	24.9	24.6	20.5	20.5		
34.0	22.5	22.7	19.0	14.9	14.9		
222	230	232	252	269	268		
4,835	6,855	6,868	8,918	11,008	10,972		
515	515	515	515	515	515		
0.990	1.150	1.145	1.310	1.465	1.460		
0.962	0.965	0.965	0.973	0.975	0.975		
1,728	2,245	2,565	2,926	2,767	2,767		
189	201	228	228	194	195		
16,805	81,700	20,889	376,886	215,654	506,887	722,541	1,218,821
1,838	7,315	1,857	29,368	15,120	35,722	50,842	91,220
14,967	74,385	19,032	347,518	200,534	471,165	671,699	1,127,601
0	697	0	6,193	1,146	8,982	10,128	17,018
16,805	81,003	20,889	370,693	214,508	497,905	712,413	1,201,803
14,967	73,688	19,032	341,325	199,388	462,183	661,571	1,110,583
769	3,655	944	25,565	10,408	48,021	58,429	89,362
14,198	70,033	18,088	315,760	188,980	414,162	603,142	1,021,221
9,725	36,392	8,144	125,291	68,109	183,190		
100.00	100.00	100.00	97.27	87.39	100.00		
14,198	70,033	18,088	307,140	165,150	414,162	579,312	988,771

(A2611)


R2E
R3E
T9S
T8S
PRODUCTIVE LIMIT
KLUMPP "A"
NET GAS SAND
PRODUCTIVE LIMIT
KLUMPP "D"
NET GAS SAND
PRODUCTIVE LIMIT
KLUMPP "E"
NET GAS SAND
RAYNE FIELD
ACADIA PARISH, LOUISIANA
SCALE
FEET
DeGOLYER AND MacNAUGHTON
DALLAS, TEXAS
LEGEND
Acreage Dedicated To
Texas-Eastern Transmission Corporation

(A2612)


R2E
R3E
T8S
T9S
PRODUCTIVE LIMIT
NODOSARIA "A"
NET GAS SAND
(NORTH SEGMENT)
PRODUCTIVE LIMIT
NODOSARIA "A"
NET GAS SAND
(SOUTH SEGMENT)
PRODUCTIVE LIMIT
HOMESEEKERS "E"
NET GAS SAND
RAYNE FIELD
ACADIA PARISH, LOUISIANA
SCALE
FEET
LEGEND

A2613

Hearing Ex. No. M-14

LEASE PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into this 4th day of December, 1958, by and between Louisiana Gas Corporation, a Delaware corporation, hereinafter referred to as "Louisiana Gas", and Texas Eastern Transmission Corporation, a Delaware corporation, hereinafter referred to as "Texas Eastern",

WITNESSETH:

WHEREAS, Louisiana Gas has entered into a Lease Sale Agreement of even date with Continental Oil Company and M. H. Marr which provides that, when certain specified conditions are met, the interests of Continental Oil Company and M. H. Marr in certain leaseholds and related properties in the Rayne Field, Acadia Parish, Louisiana, will be assigned and conveyed to Louisiana Gas, a copy of which Lease Sale Agreement is annexed hereto as Exhibit I and made a part hereof; and

WHEREAS, said Lease Sale Agreement has also been prepared for execution by Sun Oil Company and General Crude Oil Company as to the interests they own in said Rayne Field and Louisiana Gas represents that it expects Sun Oil Company and General Crude Oil Company to execute said Lease Sale Agreement in the near future; and

WHEREAS, Louisiana Gas desires to enter into an agreement with Texas Eastern to sell, and Texas Eastern desires to enter into an agreement to purchase the leasehold interests and related properties in said Rayne Field covered by such Lease Sale Agreement.

NOW, THEREFORE, in consideration of the premises, Louisiana Gas and Texas Eastern agree to the following:

A2614

I.

It is agreed that if Louisiana Gas shall acquire all of the leasehold interests and related properties of Continental Oil Company, Sun Oil Company, General Crude Oil Company and M. H. Marr (hereinafter referred to collectively as "Continental, et al") covered by the Lease Sale Agreement annexed hereto as Exhibit I, Louisiana Gas shall sell, assign and convey unto Texas Eastern, and Texas Eastern shall purchase said leasehold interests and related properties for a consideration of Twelve Million Four Hundred Twenty Thousand Five Hundred Dollars ($12,420,500.00), payable in cash to Louisiana Gas on the date of closing. In the event Louisiana Gas shall acquire less than all of the leasehold interests and related properties of Continental, et al, covered by said Lease Sale Agreement, then Texas Eastern shall have the right to purchase from Louisiana Gas the interests acquired by it, and, in such event, the consideration to be paid therefor by Texas Eastern to Louisiana Gas shall be a sum equal to the portion of the consideration paid in cash by Louisiana Gas for the interests acquired by it on the date of closing under the Lease Sale Agreement.

II.

Texas Eastern agrees to prosecute in good faith and with due diligence its Application for a Certificate of Public Convenience and Necessity filed in Federal Power Commission Docket No. G-12446 for the construction and operation of facilities necessary to enable the taking of gas production from the Rayne Field to the end that Condition No. 3 of the Lease Sale Agreement may be met or complied with within the time stipulated therefor in said Lease Sale Agreement. Texas Eastern shall keep Louisiana Gas advised of its progress and shall give Louisiana

Gas prompt notice when a Certificate of Public Convenience and Necessity satisfactory to Texas Eastern has been issued, attaching to said notice a copy of such Certificate.

A2615

III.

In the event the Lease Sale Agreement annexed hereto as Exhibit I shall for any reason terminate, or if Louisiana Gas shall fail to acquire the leasehold interests and related properties in the Rayne Field covered by said Lease Sale Agreement on or before ninety (90) days after the date hereof, then either party hereto may at any time thereafter terminate this agreement by giving written notice of such termination to the other party.

IV.

It is agreed that the sale pursuant to this Lease Purchase Agreement shall be closed at the offices of Vinson, Elkins, Weems & Searls, in the Esperson Building, Houston, Texas, or at such other location in Houston, Texas, as is mutually agreeable to the parties hereto, on the date the sale is closed pursuant to the Lease Sale Agreement attached hereto as Exhibit I. On the date of closing, Louisiana Gas shall execute the instrument captioned "Conveyance", annexed hereto as Exhibit II, and deliver same to Texas Eastern, and Texas Eastern shall pay to Louisiana Gas the consideration stipulated above by Cashier's Check; provided, however, that in the event Louisiana Gas shall acquire, and Texas Eastern shall purchase from Louisiana Gas, less than all of the interests of Continental, et al, covered in the Lease Sale Agreement, then the form of Conveyance attached hereto as Exhibit II shall be revised prior to closing to eliminate the interests not acquired by Louisiana Gas.

A2616

IN TESTIMONY WHEREOF, this instrument has been executed in multiple originals on the day and date first hereinabove written.

LOUISIANA GAS CORPORATION

By /s/ Campbell A. Griffin
President

WITNESSES:

/s/ Helen P. Waterman
/s/ Lynette Chenault

TEXAS EASTERN TRANSMISSION CORPORATION

By /s/ John C. Jacobs
Vice President

/s/ Helen P. Waterman
/s/ Lynette Chenault

A2617

STATE OF TEXAS
COUNTY OF HARRIS

On this 4th day of December, 1958, before me, a Notary Public, appeared Campbell A. Griffin, to me personally known, who being by me duly sworn, did say that he is President of Louisiana Gas Corporation, a corporation, and that the foregoing intsrument was signed on behalf of said corporation by authority of its Board of Directors, and the said Campbell A. Griffin acknowledged said instrument to be the free act and deed of said corporation.

WITNESS my official signature and seal as such Notary Public on the day, month and year first above written.

/s/ PAULINE KILLOUGH
Notary Public in and for Harris

STATE OF TEXAS
COUNTY OF HARRIS County, Texas

On this 4th day of December, 1958, before me, a Notary Public, appeared John C. Jacobs, to me personally known who being by me duly sworn, did say that he is Vice President of Texas Eastern Transmission Corporation, a corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and the said John C. Jacobs acknowledged said instrument to be the free act and deed of said corporation.

WITNESS my official signature and seal as such Notary Public on the day, month and year first above written.

/s/ PAULINE KILLOUGH
Notary Public in and for Harris County, Texas

A2618

Hearing Exhibit No. M-14

EXHIBIT I

LEASE SALE AGREEMENT
RAYNE FIELD, ACADIA PARISH, LOUISIANA
BETWEEN
CONTINENTAL OIL COMPANY
SUN OIL COMPANY
M. H. MARR AND
GENERAL CRUDE OIL COMPANY—
FIRST PARTIES
AND
LOUISIANA GAS CORPORATION—
SECOND PARTY

December 4, 1958

A2619

LEASE SALE AGREEMENT

THIS AGREEMENT made and entered into this 4th day of December, 1958, by and between Continental Oil Company, a Delaware corporation, Sun Oil Company, a New Jersey corporation, M. H. Marr, husband of Adah KleinSmid, a resident of Dallas, Texas, and General Crude Oil Company, a Delaware corporation, hereinafter referred to as "First Parties" and Louisiana Gas Corporation, a Delaware corporation, hereinafter referred to as "Second Party",

WITNESSETH:

First Parties, as the owners of oil, gas and mineral leases, surface leases and rights of way in the Rayne Field, Acadia Parish, Louisiana, agree to sell to Second Party, and Second Party agrees to purchase, such leases and the gas wells thereon with related production equipment, and rights of way, subject to the terms, conditions, reservations and exceptions set out in the Assignment and Conveyance annexed hereto as Exhibit "1", which exhibit is made a part hereof for full particulars. The oil, gas and mineral leases, surface leases and rights of way affected by this agreement are particularly described in Exhibit "A" annexed to Exhibit "1". The consideration for the sale and purchase is One Hundred Thirty-Four Million Three Hundred Ninety-Five Thousand, Seven Hundred Dollars ($134,395,700), payable Twelve Million Four Hundred Twenty Thousand, Five Hundred Dollars ($12,420,500) cash and One Hundred Twenty-One Million, Nine Hundred Seventy-Five Thousand, Two Hundred Dollars ($121,975,200) represented by the notes hereinafter referred to. The consideration for this sale is to be shared by First Parties in the following percentages:

Continental Oil Company	55.930697
Sun Oil Company	31.669095
M. H. Marr	8.404469
General Crude Oil Company	3.995739
	100.000000

This agreement to sell and purchase is conditioned on:

1. The approval of First Parties' title to said leasehold interests by the attorneys for Second Party.

2. First Parties receiving from the Internal Revenue Service a ruling in writing to the effect that the gain from the sale of leasehold interests will be considered as gain from the sale of a capital asset held for more than six (6) months under the provisions of Section 1231 of the Internal Revenue Code of 1954.

3. Certificates of public convenience and necessity being obtained from the Federal Power Commission as may be required for the construction and operation of such facilities as may be necessary to enable the taking of Second Party's gas production from said Rayne Field and transporting same to the market area in form and on terms and conditions satisfactory to Second Party and to each of the First Parties.

4. First Parties obtaining order of dismissal or filing unconditional motion to dismiss or notice of withdrawal with respect to their applications for certificates of public convenience and necessity pending in Federal Power Commission Dockets Nos.

A2620

G-12432, G-12885, G-12913, and G-12931, prior to their acceptance of certificates of public convenience and necessity that may be issued by the Federal Power Commission to

First Parties pursuant to their application in said dockets.

First Parties agree to make available to Second Party for examination, at the offices of First Parties, the lease and title files of First Parties relating to the properties and interest covered hereby; and Second Party agrees promptly to undertake such examination of same as it elects to make. The lease and title files shall be examined, and additional abstracts, title data, curative work or record examination secured or made, at the expense of Second Party. Second Party agrees to advise First Parties when Condition 1 above is satisfied.

Each of First Parties shall promptly either notify all other parties that it will not file an application for a ruling and waives the necessity of the ruling as required by Condition 2 or shall make, or cause to be made, the necessary application for a ruling by the Internal Revenue Service and prosecute such application in good faith, keeping Second Party advised of its progress upon request. As soon as a ruling has been obtained which, in the opinion and sole discretion of the party for whom the ruling was obtained, satisfies Condition 2 above, such party shall notify Second Party and all other First Parties that said Condition 2 has been satisfied as to such party.

Second Party agrees to make (or cause to be made) the necessary application for certificates of public convenience and necessity referred to in Condition 3 above and thereafter to prosecute such application in good faith, keeping First Parties advised of its progress upon request. Such application may be made at any time, but shall be made by Second Party not later than forty-eight (48) hours (exclusive of Saturdays, Sundays, and legal holidays) after Second Party receives notice from all First Parties that Condition 2 above has been satisfied or waived.

Second Party shall give First Parties notice when certificates of public convenience and necessity satisfactory to Second Party have been issued, attaching to the said notice

a copy of such certificates. Within 48 hours (exclusive of Saturdays, Sundays and legal holidays) after receipt of such notice, each of First Parties shall advise Second Party and the other First Parties whether the certificates are satisfactory; and First Parties advising that the certificates are satisfactory shall then (or at such later date as Second Party has advised that Condition 1 has been met and complied with) promptly proceed to cancel the existing gas purchase contract between such party and Texas Eastern Transmission Corporation relating to the Rayne Field and to obtain order of dismissal or file unconditional motion to dismiss its application or notice of withdrawal with respect to its application for certificates of public convenience and necessity as required to satisfy Condition 4 above, to the extent that such parties have not theretofore done so.

If all of the four conditions listed above have not been met and complied with or waived on or before ninety days after the date heerof, as to each of First Parties and Second Party, then any of First Parties hereto as to whom such conditions have not been met or complied with may, insofar, but insofar only, as its interest is affected, or Second Party may, at any time thereafter terminate this agreement by giving written notice of such termination to all of the other parties; provided that the election to terminate must, except as hereinafter provided, be exercised prior to the time all of said four conditions have been met and complied with as to such party electing to terminate. After the con-

ditions have been met and complied with as to Second Party and any of First Parties, but not all First Parties, and the time set out above for satisfaction of the four conditions has elapsed, the First Parties as to whose interests the conditions have been met and complied with, or any of

them, may terminate unless within 48 hours after notice (exclusive of Saturdays, Sundays and legal holidays) to Second Party that a final decision as to the acquisition must be made, Second Party elects to acquire the interests of such party or parties. A copy of the notice by a First Party shall be given to all other First Parties, and the election of Second Party shall be in writing, with a copy to all First Parties. In the event the agreement is terminated by any of First Parties, and all conditions have been met and complied with as to Second Party, but Second Party has not previously elected to acquire from such First Parties as to whose interests the conditions have been met and complied with, this agreement may be terminated by Second Party within five days after notice of termination by such First Party.

Upon satisfaction or waiver of the foregoing conditions as to all parties (or as to Second Party and less than all of First Parties, if Second Party notifies all other parties of its decision to proceed to close), Second Party agrees to proceed with due diligence to complete, or cause to be completed, the construction of the necessary facilities to enable Second Party to take and transport its gas production from the Rayne Field. On or before ten days after completion of the construction of such facilities, or 30 days (plus time lost, up to but not exceeding an additional 150 days, due to force majeure as herein defined) after the date on which the last of the four conditions is satisfied or waived (or notice is given by Second Party if conditions are satisfied as to less than all First Parties), whichever occurs at the earlier date, the sale shall be closed at the offices of Vinson, Elkins, Weems & Searls, in the Esperson Building, Houston, Texas, or at such other location in Houston, Texas, as is mutually agreeable to all parties; and at least five days prior to the closing date Second Party shall notify each of the First Parties of the exact date and time for closing.

On the date the sale is closed (1) all closing parties will execute the instrument captioned Assignment and Conveyance, annexed hereto as Exhibit "1", and deliver to each closing party an executed original of the said instrument; and (2) Second Party will pay the cash portion of the consideration (payment to be made by a cashier's check payable to each closing First Party), execute the notes and mortgages to secure the notes in the form agreed to by the parties, and deliver the said executed notes and mortgages to the closing First Parties. All of the foregoing instruments shall be executed and acknowledged to the satisfaction of the attorneys for each closing party. Evidence shall be submitted that the officer or agent executing each instrument for a party is authorized to bind the corporation or party.

When this agreement requires a filing or obtaining by either First Parties or Second Party of a ruling or certificate from a governmental agency, the filing or obtaining of same by a third party designated by a party hereto or having a contract with a party of such nature that it has an interest in the required action shall be deemed for the purpose of this agreement as if filed or obtained by a party hereto; provided that all notices and acceptances that same are satisfactory shall be made by the appropriate party hereto.

All notices and other communications hereunder shall be in writing and shall be deemed given when delivered or forwarded by registered mail, return receipt requested,

with postage fully prepaid, to the party to be notified, at the addresses set out under the names of the respective parties below:

Continental Oil Company
Attention: Mr. O. L. Fisher
P. O. Box 2197
Houston 1, Texas

Sun Oil Company
Attention: Mr. Buford R. Koehler
P. O. Box 2831
Beaumont, Texas

Mr. M. H. Marr
Attention: Mr. Donley C. Wertz
2500 Republic National Bank Building
Dallas, Texas

General Crude Oil Company
Attention: Mr. J. W. Cutbirth
P. O. Box 2252
Houston 1, Texas

Louisiana Gas Corporation
Attention: Mr. Campbell A. Griffin
11th Floor, Esperson Building
Houston 2, Texas

The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accidents to machinery, lines of pipe, the necessity for making repairs to or alterations of machinery

or lines of pipe, freezing of lines of pipe, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of Louisiana Gas and which by the exercise of due diligence is unable to prevent or overcome; such term shall likewise include (a) in those instances where Louisiana Gas hereto is required to obtain servitudes, rights of way grants, permits or licenses to enables Louisiana Gas to fulfill its obligations hereunder, the inability of Louisiana Gas to acquire, or the delays on the part of Louisiana Gas in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, rights of way grants, permits or licenses, and (b) in those instances where Louisiana Gas is required to secure permits or permission from any governmental agency to enable Louisiana Gas to fulfill its obligations hereunder, the inability of Louisiana Gas to acquire, or the delays on the part of Louisiana Gas in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permissions. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of Louisiana Gas, and that the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such course is inadvisable in the discretion of Louisiana Gas.

In Testimony Whereof this instrument has been executed in multiple originals on the day and date first hereinabove written.

CONTINENTAL OIL COMPANY
By O. L. Fisher
Vice President

WITNESSES:
George Wear
Rush H. Record

SUN OIL COMPANY
By Donelson Caffery
Agent and Attorney in Fact

Herf M. Weinert
K. E. Montague

M. H. MARR

Donley C. Wertz
C. M. Johnson

GENERAL CRUDE OIL COMPANY
By J. W. Cutbirth
Vice President

L. E. Frazier, Jr.
Rush H. Record

LOUISIANA GAS CORPORATION
By Campbell A. Griffin
President

George Wear
Rush H. Record

STATE OF TEXAS
COUNTY OF HARRIS

On this 4th day of December, 1958, before me, a Notary Public, appeared O. L. Fisher, to me personally known, who being by me duly sworn, did say that he is Vice President of Continental Oil Company, a corporation, and that

the foregoing instrument was signed on behalf of the said corporation by authority of its Board of Directors, and the said O. L. Fisher acknowledged said instrument to be the free act and deed of said corporation.

Witness my official signature and seal as such Notary Public on the day, month and year first above written.

JESSIE E. DEBAUN
Notary Public in and for
Harris County, Texas

Jessie E. DeBaun
Notary Public in and for Harris County, Texas
My Commission Expires June 1; 1959

STATE OF TEXAS
COUNTY OF HARRIS

On this 12th day of December, 1958, before me, a Notary Public, appeared Donelson Caffery, to me personally known, who being by me duly sworn, did say that he is Agent and Attorney in Fact of Sun Oil Company, a corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said Donelson Caffrey acknowledged said instrument to be the free act and deed of said corporation.

Witness my official signature and seal as such Notary Public on the day, month and year first above written.

CARMEN C. SPAFFORD
Notary Public in and for
Harris County, Texas

Carmen Spafford
Notary Public in and for Harris County, Texas
My Commission Expires June 1, 1959

A2624

STATE OF TEXAS
COUNTY OF DALLAS

On this 4th day of December, 1958, before me, a Notary Public, personally appeared M. H. Marr, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness my official signature and seal as such Notary Public on the day, month and year first above written.

J. B. DICKERSON
Notary Public in and for
Dallas County, Texas

J. B. Dickerson
Notary Public, Dallas County, Texas
My Commission Expires June 1, 1959

STATE OF TEXAS
COUNTY OF HARRIS

On this 12th day of December, 1958, before me, a Notary Public, appeared J. W. Cutbirth, to me personally known, who being by me duly sworn, did say that he is Vice President of General Crude Oil Company, a corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said J. W. Cutbirth acknowledged said instrument to be the free act and deed of said corporation.

Witness my official signature and seal as such Notary Public on the day, month and year first above written.

CARMEN C. SPAFFORD
Notary Public in and for
Harris County, Texas

Carmen Spafford
Notary Public in and for Harris County, Texas
My Commission Expires June 1, 1959

STATE OF TEXAS
COUNTY OF HARRIS

On this 4th day of December, 1958, before me, a Notary Public, appeared Campbell A. Griffin, to me personally known, who being by me duly sworn, did say that he is President of Louisiana Gas Corporation, a corporation, and that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Directors, and the said Campbell A. Griffin acknowledged said instrument to be the free act and deed of said corporation.

Witness my official signature and seal as such Notary Public on the day, month and year first above written.

JESSIE E. DEBAUN
Notary Public in and for
Harris County, Texas

Jessie E. DeBaun
Notary Public in and for Harris County, Texas
My Commission Expires June 1, 1959

A2625

ASSIGNMENT AND CONVEYANCE

Rayne Field, Acadia Parish, Louisiana
Between
CONTINENTAL OIL COMPANY
SUN OIL COMPANY
M. H. MARR and
GENERAL CRUDE OIL COMPANY—Grantors
And
LOUISIANA GAS CORPORATION—Grantee

Dated ....., 1959

A2626

EXHIBIT "1"

Attached to and made a part of Lease Sale Agreement between Continental Oil Company et al as "First Parties" and Louisiana Gas Corporation as "Second Party".

ASSIGNMENT AND CONVEYANCE

For Good and Valuable Consideration, the adequacy of which is acknowledged, Continental Oil Company, a Delaware corporation, Sun Oil Company, a New Jersey corporation, M. H. Marr, husband of Adah KleinSmid, a resident of Dallas, Texas, and General Crude Oil Company, a Delaware corporation, herein called "Grantors", subject to the terms and provisions herein contained and the reservations and exceptions of leasehold interests and of the production payment by Grantors as hereinafter set out, have transferred, assigned and conveyed and do by these presents hereby transfer, assign and convey, without warranty, guaranty or representation, express or implied, unto Louisiana Gas Corporation, a Delaware corporation, hereinafter called "Grantee", the oil, gas and mineral leases, the surface leases and option and rights of way described in Exhibit "A" attached hereto and made a part hereof for all purposes, together with all those wells which are presently completed as gas wells and related lease and well equipment (surface and subsurface), gathering and flow lines, tanks, separators and other equipment and personal property relating thereto (as set forth in inventory, copies of which are marked for identification and retained in possession of each of the parties), with no right of reverter as to such wells and equipment, and such rights of ingress, egress and easements for such facilities as Grantors have the right to convey.

For the purposes of this Assignment and Conveyance and the reservations of leasehold interests and of the produc-

tion payment, the terms oil, condensate (and the related terms separator liquids and natural gas liquids), gas, other minerals, net interest in production, and separation facilities are defined as follows:

(a) *Oil:* All hydrocarbons recovered in the liquid state at the surface, which hydrocarbons existed in the liquid state under original conditions of reservoir pressure and temperature.

(b) *Condensate:* All separator liquids and natural gas liquids defined as follows:

(1) *Separator Liquids:* All liquid hydrocarbons which existed in the gaseous phase under original conditions of reservoir pressure and temperature recovered by the use of mechanical separators n the field and after stabilization of such liquids in the field. The term "mechanical separators" shall exclude any device which uses the principle of liquid recirculation for liquid recovery, adsorption process, or any external refrigeration process, but shall not exclude natural expansion, low temperature separators.

(2) *Natural Gas Liquids:* All ethane and heavier liquid and liquefiable hydrocarbons not defined as oil or separator liquids, together with such methane as cannot be separated from such ethane and liquefiable hydrocarbons, recovered (and saved and sold) under the operation of the processing facilities which Grantee shall install in the field.

(c) *Gas:* All hydrocarbons in and under and which may be produced from the leases and the depths covered by this Agreement and Conveyance that are not oil or

condensate as herein defined, and that are not generally found in a solid state. The unit of volume for the purpose

of measurement shall be one (1) cubic foot of gas at a base temperature of sixty (60) degrees Fahrenheit and at a pressure of fifteen and twenty-five thousandths (15.025) pounds per square inch absolute in accordance with the provisions of Louisiana R. S. 55:151-156, known as the "Standard Gas Measurement Law" of the State of Louisiana. Computation of volumes shall be made in accordance with A.G.A. Gas Measurement Committee Report No. Three, dated April 1955, and in supplements or revisions thereto.

(d) *Other Minerals:* Sulphur, potash, uranium and any substance covered by the described leases, or any of them, that are not hydrocarbons with the scope of the definitions of oil, condensate and gas as hereinabove defined, and all substances generally found in a solid state covered by a lease.

(e) *Net Interest in Production:* The net interest in production attributable from time to time hereafter to each leasehold interest hereby assigned which was owned by Grantors immediately prior to the execution of this Assignment and Conveyance. The royalty reserved by a Lessor (or owned by others on the date of this Assignment and Conveyance) and any overriding royalty, including an overriding royalty owned by a Grantor prior to the execution of this instrument, affecting the leasehold interest of a Grantor in any such lease as of the date of this Assignment and Conveyance shall be deducted from the gross production attributable from time to time hereafter to the leasehold interests of Grantors in such lease to determine the net interest in production. Production payments in existence prior to the execution of this instrument (including the production payments and other reservations made by Kirby Petroleum Company in conveyance to Continental Oil Company dated December 20, 1954, recorded on December 21, 1954, under Act No. 270176, Conveyance Book Z-13,

Page 210 of the records of Acadia Parish, Louisiana), shall not be deducted from gross production in determining net interest in production; provided, however, Grantors agree that the amount of any payments as to gas and condensate which Grantee makes (either before or after the termination of the production payment reserved in this Assignment and Conveyance) to the owner of any such production payment (including the holders of rights so reserved by Kirby referred to above) shall be paid to Grantee by the Grantor whose leasehold interest was burdened with such production payment upon billings therefor reflecting such payment by Grantee.

(f) *Separation Facilities:* All facilities used in removing or extracting separator liquids, including stabilization facilities and stock tanks for separator liquids, if such facilities are not installed and operated as a part of a plant facility.

Grantors except and reserve from this Assignment and Conveyance the following:

I. Leasehold Rights

A. *Deep Rights:* All leasehold rights insofar, but insofar only, as said leases described in Exhibit "A" affect depths that are found below the base of the Nodosaria "A" Sand, and correlatives of such sand, which Nodosaria "A" Sand is defined as the sand found at a depth of 13,650' to 13,890' on the basis of electrical log dated October 24, 1954, run in the Mrs. Telice G. Petitjean No. 1 Well located in Section 1, Township 9-S, Range 2-E, Rayne Field, Acadia Parish, Louisiana.

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B. *Oil and Other Minerals, except Gas and Condensate:* All of the leasehold rights to the oil and other minerals, except gas and condensate, that may be found in and under

and produced from the lands and the leases described in Exhibit "A".

II. PRODUCTION PAYMENT

A production payment (the benefits and burdens of which, as between Grantors, shall be owned, borne, and payable direct to each Grantor, in the proportions of Continental Oil Company 35.930697%, Sun Oil Company 31.669095%, M. H. Marr 8.404469% and General Crude Oil Company 3.995739%) in said leasehold rights described in Exhibit "A", and all renewals and extensions thereof (including new leases on the mineral interests covered thereby, or a part thereof, or an interest therein), acquired by Grantee, its successors and assigns, during the term the production payment herein reserved, is applicable to any leasehold interest assigned and conveyed, with respect to the depths and areas assigned and conveyed to Grantee hereunder, which production payment is payable monthly out of condensate and is described, governed, limited and otherwise controlled by the following terms and provisions:

A. *Condensate:*

(1) *Separator Liquids*

After Grantee has recovered from the proceeds received by Grantee from the sale of the separator liquids attributable to the net interest in production (as same is hereinabove defined) covered by this instrument, Grantee's cost, as defined and limited below, of producing and operating the leasehold rights described in Exhibit "A", field gathering lines and the separation facilities on the basis hereinafter provided, Grantors shall be paid one hundred per cent (100%) of the remaining proceeds received by Grantee from the sale of all such separator liquids. The proceeds shall be the amount realized from the sale of such liquids, or pur-

suant to the terms of any contract for the sale and purchase of such liquids, less all taxes applicable to such liquids, or the handling and sale thereof, and less the cost of delivery to the purchaser thereof. In the event, and to the extent, of default by a purchaser under any contract for the sale of separator liquids, or in the event, and to the extent, such production cannot be disposed of (by long term contract, or otherwise) at the market price prevailing at the date of contract or sale, Grantee may market such production at the best price obtainable, or if, and to the extent that, no market is obtainable, may make such other disposition thereof as Grantee may elect.

Grantee agrees that before the gas and condensate produced from the leasehold rights leaves the Rayne Field, and before processing in a plant, the gas and the condensate not separated from gas in earlier stages of handling will (except when prevented by mechanical or operational difficulties) be run through a mechanical separator having an inlet pressure not to exceed 3,000 psig, and such separator having an outlet pressure of 1,250 psig, plus or minus 25 psig, and the separator liquids recovered will thereafter be stabilized together with liquids recovered in earlier stages of separation (except when prevented by mechanical or operational difficulties) before being run to stock tanks.

A2629

After Grantee has applied proceeds from the salvage of equipment (except with respect to wells hereafter drilled or to the extent deepened by Grantee) remaining after cost of salvaging and all sums received by it under those certain operating agreements described on page 34 of Exhibit "A" which are transferred to Grantee along with the leasehold rights, to defray its cost of producing and operating the leasehold rights (and the areas affected by said

operating agreements), field gathering lines, and separation facilities, Grantee shall be entitled to recover from the proceeds from the sale of separator liquids the remainder of its cost of producing and operating such leasehold rights (and such areas affected by said operating agreements), gathering lines, and separation facilities, which costs to be recovered are limited to those costs a prudent operator of the leases and areas would expend, including all taxes (except State, Federal and other governmental income, excess profits, capital stock, and corporate franchise taxes and taxes of a similar nature or equivalent in effect) levied or assessed against the separator liquids attributable to or borne by the net interest in production covered by this instrument, or based on the production thereof, and against the leasehold rights and equipment used in producing and operating the said leasehold rights and handling the production through the separation facilities, and except as qualified in paragraphs (a), (d) and (e) below, (i) amounts paid in settlement of claims against Grantee based on producing and operating the leasehold rights, gathering system and separation facilities, (ii) money judgments paid and costs of litigation relating to the title to a leasehold interest if the loss of title arose out of a defect existing as of the date hereof, and (iii) delay rentals paid and borne by Grantee. The maximum amount to be received by Grantee under the operating agreements referred to above and from the proceeds from the sale of separator liquids shall be the actual cost incurred by Grantee, without interest, plus a fixed sum of Four Thousand Dollars ($4,000.00) per month. Each Grantor, or a designated representative of Grantors, shall have the right to audit the books and accounts of Grantee relating to the operation of said leasehold rights (and such areas subject to said operating agreements), field gathering lines and separation facilities, the sale of condensate production, and the accounting for the production payment, provided

that the audits of any one Grantor shall not be made more often than once during any calendar year.

It is expressly understood and agreed that:

(a) Costs and expenses incurred by Grantee in connection with, and liability arising from the operation of a processing plant and the handling of production therein shall not be included in the costs to be recovered by Grantee from the proceeds from the sale of separator liquids.

(b) When, in the operation of the leasehold rights, or any well or wells on the leasehold rights, the operating pressure of any well or wells is sufficient to produce such well or wells in paying quantities against a plant inlet gas separator pressure of 1050 psig or above, and compression is necessary to permit such well or wells to produce into the plant inlet gas separator when operated at pressures above 1050 psig, such compression shall be accomplished by Grantee and the cost thereof shall not be included in the cost to be recovered from the proceeds from the sale of separator liquids. Other than

as provided in the foregoing sentence, Grantee shall not be obligated to compress production or to install compression facilities. However, when any well or wells are unable to produce in paying quantities against a plant inlet gas separator pressure of 1050 psig and the well or wells cannot be continued on production without compression, and Grantee at its option elects to install compression facilities for such well or wells as are necessary to permit such well or wells to produce against the then existing plant inlet gas separator pressure, then in such event, Grantee may recover that part of the cost of installing and operating such facilities attributable to compressing up to said pressure of 1050 psig from the proceeds from the sale of separator liquids attributable to the net interest in pro-

duction covered by this instrument, but only if and to the extent that a prudent operator owning the assigned leasehold rights subject to all of the burdens thereon (except the production payment herein reserved) would install and operate such facilities.

(c) No secondary recovery, pressure maintenance, cycling or recycling program shall be commenced by Grantee, where the cost of such program is to be recouped from the proceeds from the sale of separator liquids, unless and until such program has been approved by the Commissioner of Conservation for the State of Louisiana or a successor official or body. Grantee shall not be required to institute any such program which it has not voluntarily applied for unless so required by order of the Commissioner of Conservation of the State of Louisiana or a successor official or body.

(d) The costs to be recovered by Grantee out of separator liquids shall never include any expenses incurred by Grantee in connection with the discharge of Lessee's obligation for royalty, overriding royalty, or production payments applicable to the assigned and conveyed leasehold rights.

(e) Liability incurred by Grantee arising from the negligence or other fault of the employees of Grantee shall not be included in the cost to be recovered by Grantee from the proceeds from the sale of separator liquids.

The cost of "producing and operating" shall include, but is not limited to, expenditures in connection with the reworking, recompletion, plugging back and abandonment of wells, maintenance and operation of wells and lease and well equipment, field gathering lines and separation facilities, and cost of services and equipment purchases relating to all of the foregoing, but shall not include the cost of drilling any well which may be commenced here-

after or the cost of deepening any well below the casing previously set therein and equipping same through the Christmas tree or plugging and abandoning as a dry hole.

(2) *Natural Gas Liquids*

Grantee agrees that it will construct, or cause to be constructed, with due diligence after the execution and delivery of this Assignment and Conveyance, a gas processing plant to extract natural gas liquids, and after construction of such plant, to operate and maintain same, or cause same to be operated and maintained, as a prudent operator. At the end of each calendar month after the completion of such plant an accounting, in accordance with the provisions of Exhibit "B"

hereto attached, shall be made to the Grantors (as the owners of the production payment) from the proceeds from the sale of such natural gas liquids. In connection with the above computation, production payments in existence prior to the execution of this instrument (including production payments and other reservations made by Kirby Petroleum Company in the conveyance to Continental Oil Company referred to above) shall be considered, and payments in connection therewith (and reimbursement therefor) shall be made, in the same manner as provided in determining "net interest in production" as hereinabove set forth.

B. *Limitations on Production Payment:*

(1) The production payment shall continue in effect until the gas production saved and taken by Grantee attributable to the net interest in production covered by this instrument equals 613,406,770,000 cubic feet of gas, measured after condensate is removed, or until the economically recoverable gas reserves in the assigned and conveyed lease-

hold rights attributable to the net interest in production covered by this Assignment and Conveyance equal 30 billion cubic feet of gas, as the term "gas" is herein defined, whichever occurs first, whereupon said production payment shall cease and terminate.

(a) When, in the opinion of Grantee, the leasehold interests affected by this Assignment and Conveyance are reaching a state of depletion which would terminate the production payment reserved by Grantors, prior to termination by reason of production in the quantity of 613,406,770,000 cubic feet of gas as specified above, then at least six (6) months, but not more than nine (9) months, prior to the time Grantee estimates that the reserved production payment will terminate, Grantee shall give each Grantor notice of its calculation of the remaining economically recoverable gas reserves attributable to the net interest in production covered by this Assignment and Conveyance, setting out in the notice the hour and date as of which the computation is made. In computing the economics of recovery of the final 30 million cubic feet of economically recoverable reserves, the production payment of Grantors herein reserved shall not be treated as part of the burdens to which Grantee is subject as owner of such leasehold interests, but all royalty, overriding royalty, production payments and other burdens to which such leasehold interests were subject, and which will be applicable to the final 30 billion cubic feet of economically recoverable gas reserves, at the time of this Assignment and Conveyance to Grantee shall be so included: and gas, as herein defined, shall be valued at 22.6¢ per MCF, in making a determination of economically recoverable gas reserves. Within thirty (30) days after receipt of the notice each Grantor shall notify Grantee of any questions, clarifications, objections or comments that it may have regarding Grantee's determination with copy to each other Grantor. Failure of

a Grantor to reply to the notice from Grantee within the thirty-day period shall be conclusive proof that such Grantor concurs in the opinion and determination of Grantee.

Should any Grantor question the determination of Grantee by written notice to Grantee within said thirty-day period, and the protesting Grantor, and all other Grantors, and Grantee are unable to agree upon the remaining

quantity of economically recoverable gas reserves within sixty (60) days after all Grantors have received the notice from Grantee, then the determination of the then economically recoverable gas reserves attributable to the net interest in production covered by this Assignment and Conveyance shall be submitted to and determined by arbitration in the manner provided below.

Within fifteen (15) days after the expiration of the period of time set out in the paragraph above, without mutual agreement of Grantee and all Grantors, Grantee and Grantors shall attempt in good faith to agree upon and designate in writing a disinterested consultant or consulting firm of established reputation and experience in the field of gas reserves which consultant or firm shall serve as arbitrator.

If all parties are unable in such fifteen (15) day period to agree upon and select an arbitrator, then any party shall have the right to apply to the person who is then Secretary of the American Petroleum Institute for the appointment of such arbitrator. Each of the other parties shall be privileged to submit to the Secretary of the American Petroleum Institute a list of consultants or a consulting firm of established reputation and experience acceptable to it with a request that within fifteen (15) days after reference to the Secretary of the American Petroleum

Institute one of the designated consultants shall be appointed by the Secretary of the American Petroleum Institute as arbitrator.

The arbitrator chosen by the parties, or pursuant to application for appointment by the Secretary of American Petroleum Institute, shall fix a reasonable time and place for the hearing at which time all interested parties may submit such evidence as they see fit. Such arbitrator shall determine the quantity of economically recoverable gas reserves attributable to the net interest in production covered by this Assignment and Conveyance as of the date and hour of determination by Grantee. The decision of such arbitrator shall be set forth in writing and shall be final and binding on all parties. The costs of the arbitration shall be paid one-half (½) by Grantee and one-half (½) by the several Grantors in the proportions of their respective percentages of the net interest in production covered by this Assignment and Conveyance.

(b) After the date that Grantee has forwarded to Grantors its estimate of the economically recoverable gas reserves, monthly statements of production will set out the volume remaining to be produced prior to the estimated date of termination of the reserved production payment, which balance remaining to be produced shall be computed by deducting from the economically recoverable gas reserves as originally estimated by Grantee, or as may be determined by arbitration, the cumulative total of subsequent production. All Grantors shall be given written notice by Grantee of the date and hour that the reserved production payment has terminated. In the event arbitration becomes necessary, then all sums thereafter payable to Grantors for the reserved production payment shall be deposited in an escrow account in a national banking association for distribution consistent with the determination of the economically recoverable gas reserves by the arbitrator.

(2) The production payment shall not constitute a debt or personal liability of Grantee, but same is to be paid as provided herein, if, as and when produced from said leasehold rights.

(3) The production payment shall bear all taxes of every kind and character properly chargeable against such payment and the condensate production on which it is based.

(4) With regard to any portion of said leasehold rights which has been pooled or unitized on the date hereof, and with regard to any portion of said leasehold rights which may hereafter by order of the Department of Conservation of the State of Louisiana or other governmental authority be pooled, unitized or integrated, the interest in production which Grantors are entitled to receive by virtue of said production payment as to said tracts so pooled, unitized or integrated shall be adjusted in like manner as is provided with regard to the royalty interest of the Lessor or as is provided in such contract, law, regulation or order.

This assignment is made and accepted subject to all of the terms, provisions and conditions of the oil, gas and mineral leases described in Exhibit "A." Grantee agrees that it will pay, or cause to be paid, any delay rental payments which may be required to maintain any of the leases; provided, however, that if, on a surface acre basis, a part of a lease affected hereby is retained by one or more Grantors, such Grantor (or Grantors) shall bear the pro rata portion (on a surface acre basis) of the expense of any such delay rental payments. Grantee further agrees that it will pay, or cause to be paid, at its expense, any shut-in gas well payment that may be required for a gas well completion in the assigned and conveyed depths; otherwise such payment shall be the obligation of Grantors. Grantee shall never be held liable or responsible in dam-

ages for any error in connection with the payment or non-payment of shut-in royalty or delay rental as long as such acts are done or omitted in good faith.

Grantee agrees that so long as a lease included in the assigned and conveyed leasehold interests can be developed and produced in paying quantities, it will so develop and produce such lease and otherwise comply with the obligations of the lease, insofar as assigned and conveyed, as a prudent operator; provided, however, that Grantee may, by tendering to Grantors (in the proportionate interest set out herein for ownership of the production payment) a reassignment of the interest conveyed to it hereunder in said lease or portion thereof, free and clear of any mortgage, lien, encumbrance, production payment or other obligation (excepting, however, first, such of the foregoing as are created by Grantee with the advance written consent of Grantors; second, such of the foregoing as are a burden on the leasehold interest assigned hereunder immediately prior to the effective date hereof; third, Grantors' vendors' lien and privilege; and fourth, the Acts of Mortgage and Pledge executed to secure Grantors in the credit portion of the purchase price therefor), be relieved of all obligations as to said reassigned lease or portion thereof thereafter accruing (including the responsibility for compliance with any demand for a release of a lease or a portion thereof made by a Lessor which is the immediate reason for the tender of reassignment), and such obligations shall be assumed by Grantors. Subsequent to the date of any such reassignment to Grantors, production from the reassigned lease shall be free of the production payment herein reserved and shall not thereafter be considered in determining the termination of the production payment. When the assigned and conveyed leasehold interests are no longer being produced from

a lease described in Exhibit "A" and a prudent operator would not further drill or develop same and the reserved and excepted leasehold interests of Grantors in such lease are being produced or developed, Grantee shall, upon request, tender to Grantors for concurrence a release of the assigned leasehold rights to Lessor, free and clear of any mortgage, lien, encumbrance, production payment or other obligation (excepting, however, first, such of the foregoing as are created by Grantee with the advance written consent of Grantors; second, such of the foregoing as are a burden on the leasehold interest assigned, hereunder immediately prior to the effective date hereof; third, Grantors' vendors lien and privilege; and, fourth, the Acts of Mortgage and Pledge executed to secure Grantors in the credit portion of the purchase price herefor) covering all of the leasehold interests in and to such lease acquired under this Assignment and Conveyance, and thereafter Grantee shall have no further obligation to Lessor under the lease and such obligations shall be assumed by Grantors.

Should Grantors elect not to maintain their interest in a lease, or elect not to comply with a claim, demand or obligation of a lease, and the terms of the said lease do not permit a partial release, insofar as Grantors' rights are affected, and Grantors are unable to secure Lessor's acceptance of a partial release, Grantors shall so notify Grantee and Grantee shall promptly, at its option, either join in a release of the said lease or accept an assignment of all reserved rights of Grantors in and to said lease and hold Grantors harmless from claims arising subsequent to the notice but including, however, the responsibility for compliance with any demand for a release of a lease or a portion thereof made by a Lessor which is the immediate reason for the notice. Subsequent to the date of any such assignment to Grantee, production from the assigned lease

shall be free of the production payment herein reserved and shall not thereafter be considered in determining the termination of the production payment.

Grantors reserve and except from this Assignment and Conveyance such rights of ingress, egress and easements as are necessary to explore for, drill, produce, store, transport, separate, treat, process and market production of oil and other minerals above the base of the Nodosaria "A" Sand, and all oil, gas, condensate and other minerals below the base of the Nodosaria "A" Sand. Grantors reserve such other rights and easements under and by virtue of the assigned and conveyed leases as may be necessary or desirable to develop and operate the interests in the described leases and lands reserved to Grantors herein. Grantors and Grantee agree that they will conduct all operations in connection with their respective interests in said leases in such manner that each will not unduly interfere with the operations of the other. Locations on the surface and drilling wells shall be a reasonably safe distance from previous installations, locations and wells of the other party, and each party shall keep the other advised of its proposed and completed locations. Precautions shall be taken in all wells to protect the leasehold interests of the party not owning an interest in the well.

Should Grantee or Grantors elect to plug and abandon a well or wells located on the lands described in Exhibit "A" and remove the casing therefrom, then prior to the removal of any casing or other material or equipment in or on such well and the actual plugging of same, the party electing to plug and abandon shall notify all other parties of its intention, and the parties so notified shall have the right for a period of forty-eight (48) hours (exclusive of Saturdays, Sundays and legal holidays) after receipt of such notice to take over such well and all of the casing therein, and all or any part of other material or equipment

thereon or therein, for the purpose of plugging back, deepening, completing or recompleting such well as a well producing from the leasehold rights of such party or parties. If a party or parties receiving notice elect to take over such well, such party or parties shall pay the party giving notice of intention to plug and abandon the reasonable salvage value, less the reasonable cost of recovering and removing same, for all of the recoverable casing and the materials and equipment which such party or parties elect to take over, which payment shall be made on or before fifteen (15) days after the determination of such salvage value or the taking over of such well, whichever event shall last occur. If the parties receiving notice of intention to plug and abandon do not elect to take over any such well, by giving notice of their election to take over within the time permitted above, the party giving notice of intention to plug and abandon shall be free to pull and remove the casing therefrom and proceed to plug and abandon such well. The provisions of this paragraph shall never cause or require any reversions to Grantors of the leasehold interest assigned and conveyed hereby nor shall Grantee be required hereby to plug and abandon or to offer for purchase any well which Grantee may elect to shut in without abandoning or which Grantee may elect to rework or recomplete as a gas well.

All benefits and burdens of Grantors hereunder shall, as between Grantors, be owned and borne in the proportionate interest set out herein for ownership of the production payment.

The provisions hereof shall inure to the use and benefit of the parties hereto and shall be covenants running with the land and binding upon the Grantors and Grantee, their heirs, legal representatives, successors and assigns with the express understanding that any assignment or trans-

fer of an interest of Grantee acquired hereunder is expressly prohibited and shall be null and void, unless at least thirty (30) days prior to the closing date of the proposed transfer Grantors are advised in writing of the name of the proposed purchaser with proof that the sale can be completed and furnished copies of all instruments to be completed with detailed information as to the purchase price and method of payment. Grantors shall have the preferential right and option to purchase and acquire such interest (in the proportionate interest set out herein for ownership of the production payment) for the consideration and upon the same terms and conditions as that proposed. Unless Grantors notify Grantee that they, or any one or more of them, for the full interest to be transferred, exercise their preferential option to purchase within fifteen (15) days after receipt of the notice of the proposed sale, the option as to such proposed sale shall be terminated. A transfer by Grantee, and any subsequent transfer, shall include a provision that Grantors shall have a preferential right to purchase from such purchaser, identical with that reserved herein and it shall contain a recognition of Grantors' vendors' lien and privilege to secure the unpaid portion of the purchase price for the leasehold rights assigned and conveyed herein, and the fifteen (15) day period that Grantors have to exercise their preferential right to purchase shall not commence to run unless and until the instruments presented contain such provisions. The preferential right to purchase does not apply in case of a merger, consolidation, transfer to a subsidiary or parent corporation, or any involuntary transfer thereof required by law when Grantee cannot legally meet the requirements of this paragraph, provided that Grantee shall give each Grantor notice immediately after it is informed by proceedings or order that such involuntary transfer may be or is required; however, all such transfers

shall contain provisions preserving the preferential right of Grantors herein to purchase.

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Except for the Acts of Mortgage and Pledge executed to secure Grantors in the credit portion of the purchase price herefor, a copy of any proposed mortgage, lien or other encumbrance to be placed on the leasehold interests acquired by Grantee hereunder, whether placed on the property by Grantee or a successor and assign, shall be furnished to Grantors. The mortgage, lien or encumbrance shall contain express provisions permitting each Grantor to foreclose its or his mortgage securing the notes for the credit portion of the consideration for the sale, without notice to the holder thereof, and shall obligate the holder to release the subject property from his mortgage, lien or encumbrance when the proceeding by such Grantor is complete. Prior to the time the credit portion of the purchase price for the leasehold rights assigned and conveyed herein is paid in full, the placing of a mortgage, lien or encumbrance is prohibited, unless a copy of the proposed mortgage, lien or encumbrance has been furnished to each Grantor as provided in this paragraph and the written approval of all Grantors to such proposed mortgage, lien or encumbrance has been given.

Any notice or other communication hereunder shall be deemed to be fully given if deposited in the United States Post Office, by registered mail, postage fully prepaid, addressed to the parties at the addresses set out below

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or such other addresses as they shall hereafter designate in writing:

Continental Oil Company
Attention: Mr. O. L. Fisher
P. O. Box 2197
Houston 1, Texas

Sun Oil Company
Attention: Mr. Buford R. Koehler
P. O. Box 2831
Beaumont, Texas

M. H. Marr
Attention: Mr. Donley C. Wertz
2500 Republic National Bank Building
Dallas, Texas

General Crude Oil Company
Attention: Mr. J. W. Cutbirth
P. O. Box 2252
Houston 1, Texas

Louisiana Gas Corporation
Attention: Mr. Campbell A. Griffin
11th Floor — Esperson Building
Houston 2, Texas

Each party shall have the right to change its address for all purposes by notifying each of the other parties hereto of the new address in writing. In the event of any transfer under the terms hereof which results in the interest originally vested in any party hereto being divided into ownership by more than one party, then the holders of such original interest divided into more than one ownership shall for the purposes of

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convenience under the terms hereof, designate one person to whom all notices shall be given, and such giving of

notice shall be effective as to all parties then owning said interest.

In Testimony Whereof, this Assignment and Conveyance has been executed by all parties in multiple originals on this ..... day of ....., 1959.

CONTINENTAL OIL COMPANY

By .....

Vice President

Witnesses:

.....

.....

SUN OIL COMPANY

By .....

Agent and Attorney in Fact

.....

.....

.....

M. H. MARR

.....

.....

GENERAL CRUDE OIL COMPANY

By .....

Vice President

Grantors

.....

.....

LOUISIANA GAS CORPORATION

By .....

President

.....

.....

Grantee

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STATE OF TEXAS
COUNTY OF HARRIS

On this ..... day of ....., 1959, before me, a Notary Public, appeared ....., to me personally known, who being by me duly sworn, did say that he is Vice President of Continental Oil Company, a corporation, and that the foregoing instrument was signed on behalf of the said corporation by authority of its Board of Directors, and the said ..... acknowledged said instrument to be the free act and deed of said corporation.

Witness my official signature and seal as such Notary Public on the day, month and year first above written.

.....
Notary Public in and for
Harris County, Texas

STATE OF TEXAS
COUNTY OF HARRIS

On this ..... day of ....., 1959, before me, a Notary Public, appeared ....., to me personally known, who being by me duly sworn, did say that he is Agent and Attorney in Fact of Sun Oil Company, a corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said ..... acknowledged said instrument to be the free act and deed of said corporation.

Witness my official signature and seal as such Notary Public on the day, month and year first above written.

.....
Notary Public in and for
Harris County, Texas

STATE OF TEXAS
COUNTY OF HARRIS

On this ..... day of ....., 1959, before me, a Notary Public, personally appeared M. H. Marr, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Witness my official signature and seal as such Notary Public on the day, month and year first above written.

.....
Notary Public in and for
Harris County, Texas

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STATE OF TEXAS
COUNTY OF HARRIS

On this ..... day of ....., 1959, before me, a Notary Public, appeared ....., to me personally known, who being by me duly sworn, did say that he is Vice President of General Crude Oil Company, a corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said ..... acknowledged said instrument to be the free act and deed of said corporation.

Witness my official signature and seal as such Notary Public on the day, month and year first above written.

.....
Notary Public in and for
Harris County, Texas

STATE OF TEXAS
COUNTY OF HARRIS

On this ..... day of ....., 1959, before me, a Notary Public, appeared ....., to me personally known,

who being by me duly sworn, did say that he is President of Louisiana Gas Corporation, a corporation, and that the foregoing instrument was signed on behalf of the said corporation by authority of its Board of Directors, and said ..... acknowledged said instrument to be the free act and deed of said corporation.

Witness my official signature and seal as such Notary Public on the day, month and year first above written.

.....
Notary Public in and for
Harris County, Texas

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EXHIBIT "A"
TO
ASSIGNMENT AND CONVEYANCE
RAYNE FIELD
ACADIA PARISH, LOUISIANA
BETWEEN
CONTINENTAL OIL COMPANY, ET AL,
AS GRANTORS
AND
LOUISIANA GAS COMPANY, AS GRANTEE

Dated ....., 1959

(The recording references hereinafter given are all in the Conveyance Records of Acadia Parish, Louisiana)

Leases with ownership:

Continental 56.95%, Sun 27.81%, M. H. Marr 10.43%, General Crude 4.81%.

A-1. Continental Lease No. 68881, dated December 6, 1949, between Allen J. Faul, Lessor, and W. Brooke Hamilton, Lessee, recorded under File No. ....., Book E-10,

Page 286, covering and affecting lands described as follows, to-wit:

A certain tract of land containing 43 acres, more or less, situated in Section One (1), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows to-wit:

On the North by lands of Armogeon Meche; On the East by lands of Mrs. Andre Menard; on the South by lands of Noah Stelly; On the West by lands of Dupreville Cormier and Willie Lyons.

A-2. Continental Lease No. 68882, dated December 8, 1949, between Noah Stelly, Lessor, and W. Brooke Hamilton, Lessee, recorded under File No. ....., Book E-10, Page 310, covering and affecting lands described as follows, to-wit:

A certain tract of land containing 50 acres, more or less, situated in Section One (1), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of Elmo Credeur, Willie Lyons, and Allen J. Faul; On the East by lands of Pierre N. Cormier or Assigns; On the South by lands of Mrs. Martin Petitjean; On the West by lands of Elmo Credeur.

A-3. Continental Lease No. 68883, dated August 19, 1949, between Elton A. Arceneaux, Lessor, and W. Brooke Hamilton, Lessee, recorded under File No. 224703, Book W-9, Page 71-72, covering and affecting lands described as follows, to-wit:

A certain tract of land containing 60 acres, more or less, situated in Section Eleven (11), Township Nine

South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of Waddy Arceneaux and Lennie Arceneaux; On the East by lands of Mrs. T. G. Petitjean, Henry and Edward Arceneaux or assigns; On the South by lands of Eugene Dupuis or assigns; on the West by lands of Waddy Arceneaux and Lennie Arceneaux.

A-4. Continental Lease No. 68884, dated December 9, 1949, between Alicia Roach Blanchard, Widow, Lessor, and W. Brooke Hamilton, Lessee, recorded under File No.

226590, Book E-10, Page 294, covering and affecting lands described as follows, insofar but only insofar as said lease covers 103.20 acres, to-wit:

A certain tract of land containing 103.20 acres, more or less, situated in Section One (1) and Twelve (12), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows:

North by lands of Ovey Arceneaux, Mr. T. G. Petitjean and Noah Stelly; East by lands of Pierre N. Cormier and Joel W. Golsby, et al; South by lands of Joel W. Golsby, et al, and Edward Arceneaux; West by lands of Mrs. T. G. Petitjean and Ovey Arceneaux.

A-5. Continental Lease No. 68885, dated September 1, 1949, between Estate of J. S. Arceneaux, Sr., Inc., Lessor, and W. Brooke Hamilton, Lessee, recorded under Entry No. 226587 in Conveyance Book E-10, Page 281, as ratified by instrument dated March 19, 1954, executed by Davis Roy Arceneaux et al, and recorded under Entry No.

264750, covering and affecting lands described as follows, to-wit:

Tract 1: 245 acres, more or less, situated in Section Two (2) and Three (3), Township Nine (9) South, Range Two (2) East, Acadia Parish, Louisiana, and further described as bounded on the Northeast by Ovey Arceneaux, on the East by Noah Stelly, T. Gaspard, or assigns, Ovey Arceneaux and Public Road; Southeast by public road; Southwest by Martin Petitjean and G. Monton; Northwest by Estate of Homer Arceneaux, or assigns.

Tract 2: 20 acres, more or less, situated in Section Three (3), Township Nine (9) South, Range Two (2) East, Acadia Parish, Louisiana, and further described as bounded Northwest by Bayou Wikoff, South, Southwest and West by Estate of Homer Arceneaux, or assigns, Northeast by Estate of Moise Arceneaux, or assigns, East by Estate of Moise Arceneaux, or assigns.

A-6. Continental Lease 68886, dated April 7, 1951, by and between W. Petitjean and Company, Lessor, and M. H. Marr, Lessee, recorded under File No. 243879, in Volume C-11, Page 199, covering and affecting lands described as follows, to-wit:

A certain tract of land situated in Section Four (4) and Forty-Seven (47), Township Nine (9) South, Range Two (2) East, Louisiana Meridian, Acadia Parish, Louisiana, containing Three Hundred Sixty-Six (366) acres, more or less, bounded North by Bayou Wikoff, Claby Dugas, or assigns, Ovey Alleman, or assigns, J. Warren Arceneaux, or assigns, a small tract of land belonging to Martin Petitjean, or assigns, Gerard Mouton, or assigns, Celina Mouton Comeaux, or assigns, Bertrand Sweeny and Arnold Kahn, or assigns, J. Weston Arceneaux, or assigns,

J. Walter Arceneaux, or assigns, and Lennie Arceneaux, or assigns, South by Gerard Mouton, or assigns, Leonce Breaux, or assigns, John Bearb, or assigns, Lenes Hulin, or assigns, Leewood Richard and Rodney Richard, or assigns, Lilly H. Comeaux, or assigns, Clemence H. Gussman, or assigns, Rosa H. Falcon, or assigns, and Estate of Jean Falcon, or assigns, East by Bayou Wikoff, Claby Dugas, or assigns, Celina Mouton Comeaux, or assigns, J. Warren Arceneaux, or assigns, Bertrand Sweeny and Arnold Kahn, or assigns, J. Walter Arceneaux, or assigns, Lennie Arceneaux, or assigns, Gerard Mouton, or assigns, and Leonce Breaux, or assigns, and West by Gerard

Mouton, or assigns, John Bearb, or assigns, Lenes Hulin, or assigns, Leewood Richard and Rodney Richard, or assigns, Lilly H. Comeaux, or assigns, Clemence H. Gussman, or assigns, Rosa H. Falcon, or assigns, Estate of Jean Falcon, or assigns and Bayou Wikoff.

A certain tract of land situated in Section Forty-Seven (47) Township Nine (9) South, Range Two (2) East, Louisiana Meridian, Acadia Parish, Louisiana, containing Two and 88/100 (2.88) acres, more or less, and being Lots No. Two (2) and Three (3) of Block "C" of the partition of Gabriel Mouton, et al, recorded under File No. 66624, at Pages 774; et seq., of Conveyance Book Q-3, Records of Acadia Parish, Louisiana.

A-7. Continental Lease No. 68887, dated June 27, 1952, between Felix Falcon, Lessor, and F. J. Muller, Lessee, recorded under File No. 253269, Book R-11, Page 375, covering and affecting lands described as follows, to-wit:

4 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the Northeast by lands of Ursin Trahan; Southeast by lands of John Trahan; Southwest by lands of Azema Moss and Honore Doget, M. A. Petitjean; Northwest by lands of M. A. Petitjean and Bayou Wikoff and or Pirmin H. Habetz.

A-8. Continental Lease No. 68888, dated July 27, 1952, between Isaac Hanks, Lessor; and F. J. Muller, Lessee, recorded under File No. 253271, Book R-11, Page 380, covering and affecting lands described as follows, to-wit:

3.5 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the Northeast by lands of M. and A. Petitjean, Bayou Wikoff; Southeast by lands of Azema Moss and Honore Doget; Southwest by lands of Adolph Petitjean; Railroad-Right-of-Way and or Leo Moss; Northwest by lands of Bayou Wikoff, and or A. Moss and Honore Doget.

A-9. Continental Lease No. 68889, dated November 3, 1952, between J. Warren Arceneaux, Lessor, and Henry T. Duson, Lessee, recorded under File No. 255400, Book Y-11, Page 278, covering and affecting lands described as follows, to-wit:

One Hundred Twenty-Three and 82/100 (123.88) acres, more or less, situated in Sections Three (3) and Forty-seven (47), Township Nine (9) South, Range Two (2) East, Louisiana Meridian, Acadia Parish, Louisiana, more particularly described as follows:

(a) Thirty six and 63/100 (36.63) acres, more or less in Section Forty Seven (47), Township Nine (9) South,

Range Two (2) East, bounded now or formerly as follows:

On the Northwest by land of Claby Dugas; on the Northeast by land of Lessor herein described under "(c)" and "(b)"; on the Southeast by land

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of W. Petitjean and Co., and on the Southwest by land of W. Petitjean and Co.

(b) Forty-seven and 15/100 (47.15) acres, more or less, in Sections Three (3) and Forty-Seven, Township Nine (9) South, Range Two (2) East, bounded now or formerly, as follows:

On the Northwest by lands of Lessor herein described under "(c)", of J. S. Arceneaux and Warren J. Arceneaux; on the Northeast by lands of Dumas Cormier; on the Southeast by land of Arnold Kahn, et al; and on the Southwest by land of W. Petitjean & Co., and of lessor herein described under "(a)";

(c) Twenty-five and 85/100 (25.85) acres, more or less, in Section Forty-Seven (47), Township Nine (9) South, Range Two (2) East, bounded now or formerly, as follows:

On the Northwest by land of Arnold Kahn, et al; on the Northeast by land of J. S. Arceneaux; on the Southeast by land of Lessor herein described under "(b)"; and on the Southwest by land of Lessor, herein described under "(a)" and "(d)", and of Claby Dugas;

(d) Seven and 56/100 (7.56) acres, more or less, in Section Forty-Seven (47), Township Nine (9) South, Range Two (2) East, bounded now or formerly as follows:

On the Northwest by Bayou Wikoff and land of Lessor herein described under "(e)"; on the Northeast by land of Arnold Kahn, et al, and other land of Lessor herein described under "(c)"; on the Southeast by land of Claby Dugas; and on the Southwest by land of Claby Dugas;

(e) Five (5) acres, more or less, in Section Forty-Seven (47), Township Nine (9) South, Range Two (2) East, bounded now or formerly, as follows:

On the Northwest by Bayou Wikoff; on the Northeast by land of J. Tenas Arceneaux, Agnes Janice Romero, and J. Walter Arceneaux; on the Southeast by land of Lessor herein described under "(d)", and Bayou Wikoff; and on the Southwest by Bayou Wikoff;

(f) One and 63/100 (1.63) acres, more or less, in Section Forty-Seven (47), Township Nine (9) South, Range Two (2) East, bounded now or formerly, as follows:

On the Northwest by Bayou Wikoff; on the Northeast by land of W. Petitjean and Co.; On the Southeast by land of W. Petitjean and Co.; and on the Southwest by land of Ovey Allemand or Claby Dugas.

A-10. Continental Lease No. 68890, dated November 14, 1952, between John Bearb, et ux, Lessor, and Sun Oil Company as Lessee, recorded under File No. 255477, Book Y-11, Page 526, covering and affecting lands described as follows, insofar but only insofar as said lease covers 41 acres, to-wit:

41 acres of land, more or less, located in Section 4, Township 9 South, Range Two (2) East, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the Northeast by lands of Martin Petitjean, Gerard Mouton, Southeast

by lands of Gerard Mouton; Southwest by lands of Mrs. Clement Hulin, et al, Northwest by lands of Martin Petitjean.

A-11. Continental Lease No. 68891, dated August 18, 1949, between Thelice G. Petitjean, Lessor, and W. Brooke Hamilton, Lessee, recorded under File No. 224700, Book W-9, Page 65, covering and affecting lands described as follows, to-wit:

Tract No. 1: A tract of land containing 65 acres, more or less, situated in Section 1, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded as follows, to-wit:

Bounded on the North by lands of Noah Stelly or assigns; bounded on the East by lands of T. Blanchard Est., or assigns; bounded on the South by lands of Ovey Arceneaux and T. Blanchard Est., or assigns; bounded on the West by lands of Wady Arceneaux or assigns;

Tract No. 2: A tract of land containing 40 acres, more or less, situated in Section 12, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded as follows, to-wit:

Bounded on the North by lands of Ovey Arceneaux or assigns; bounded on the East by T. Blanchard Est., or assigns; bounded on the South by lands of E. Broussard and Edward Arceneaux or assigns; bounded on the West by lands of Alton Arceneaux or assigns.

A-12. Continental Lease No. 68892, dated December 6, 1949, between Dupreville Cormier, et ux, Lessor, and W. Brooke Hamilton, Lessee, recorded under File No. .....

Book E-10, Page 290, covering and affecting lands described as follows, to-wit:

A certain tract of land containing 73.73 acres, more or less, situated in Section 1, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded as follows, to-wit:

North by lands of Emilie Navarre, Mrs. T. Melancon, Eddie Melancon, and Lezie Comeaux, or assigns; East by lands of Amogeon Meche and Allen J. Faul, or assigns; South by lands of Mrs. L. Castile, Elmo Credeur and Noah Stelly, or assigns; West by Emile Cormier, Mrs .L. Castile and Elmo Credeur, or assigns.

A-13. Continental Lease No. 68906, dated August 22, 1949, between Dumas Cormier, Lessor and W. Brooke Hamilton, Lessee, recorded under File No. 224704, Book W-9, Page 73-74, covering and affecting lands described as follows, to-wit:

A certain tract of land containing 91.5 acres, more or less, situated in Section 3, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the Northwest by a creek and the lands of Claud Cohanan, Renk Cohanan and G. Cohanan or assigns; on the Northeast by lands of Ovey Arceneaux; on the Southeast by lands of Ovey Arceneaux and Lennie Arceneaux; on the Southwest by lands of W. J. Arceneaux, J. Warren Arceneaux, Sweeney and Kahn, J. Walter Arceneaux, J. Western Arceneaux, or assigns, and Gravel Road.

A-14. Continental Lease No. 68907, dated June 8, 1945, between Gerard Mouton,

Lessor, and F. J. Muller, Lessee, recorded under File No. 188771, Book E-8, Page 230, covering and affecting lands in Acadia Parish, Louisiana described as follows, to-wit:

Tract No. 1: 122.50 acres, more or less, located in Section 47, Township 9 South, Range 2 East, bounded North by lands of Martin Petitjean; East by lands of Martin Petitjean and J. Clyde Arceneaux; South by lands of Dolzie Dupuis and Zepherin Breaux, West by lands of Martin Petitjean.

Tract No. 2: 40 acres of land, more or less, located in Section 4, Township 9 South, Range 2 East, bounded North by lands of John Bearb and Martin Petitjean; East by lands of Martin Petitjean; South by lands of Lessor; West by lands of John Bearb;

Tract No. 3: 36.08 acres of land, more or less, located in Section 11, Township 9 South, Range 2 East, bounded North by land of John Bearb and Lessor; East by lands of Zepherin Breaux; South by lands of J. Bearb; Manuel Petitjean and Mrs. Theophile Petitjean; West by Mrs. Theophile Petitjean and Manuel Petitjean

Tract No. 4: 4.42 acres of land, more or less, located in Section 47, Township 9 South, Range 2 East, bounded North by Bayou Wikoff; East by Gabriel Mouton, South by Gabriel Mouton and Martin Petitjean; West by Cemetery.

A-15. Continental Lease No. 68908, dated August 29, 1949, between Claby Dugas, Lessor, and F. J. Muller, Lessee, recorded under File No. 221530, Book V9, Page 23, and as amended by an instrument dated June 24, 1954, executed by Claby Dugas and recorded under Entry No. 266840, covering and affecting lands described as follows, to-wit:

27.33 acres, more or less, bounded now or formerly, North by Philomene A. Johnson, or assigns, Lena A. Junot, or assigns, Celina M. Comeaux, Laura M. Castille, Dermas Mouton and Bayou Wikoff; South by Celina M. Comeaux, Martin Petitjean and Gerard Mouton; East by Philomene A. Johnson or assigns, Lena A. Junot, or assigns, Dermas Mouton and Bayou Wikoff and West by Martin Petitjean, Gerard Mouton and Bayou Wikoff.

2 acres, more or less, bounded now or formerly North by Alcee Alleman, or assigns and Bayou Wikoff; South by Martin Petitjean; East by Alcee Alleman, or assigns, and West by Martin Petitjean and Bayou Wikoff.

1 acre, more or less, bounded now or formerly, North by Bayou Wikoff; South by Martin Petitjean; East by Laura Mouton Castille, and West by Alcee Alleman.

3.78 acres, more or less, bounded now or formerly North by Bayou Wikoff; South and West by Gabriel Mouton and East by Laura Mouton Castille. All of the above described land is situated in Section 47, Township 9 South, Range 2 East.

A-16. Continenal Lease No. 68909, dated August 19, 1949 between J. Overy Arceneaux, et al, Lessor, and Brooke Hamilton, Lessee, recorded under File No. 224702. Book W-9, Page 59-60, and as amended by an insturment dated July 1, 1954, executed by J. Ovey Arceneaux, et al, and recorded under Entry No. 267171, covering and affecting lands described as follows, to-wit:

Tract No. 1: A certain tract of land containing 70 acres, more or less, situated in Section 46, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the Northwest by Isaac Melancon and Joe Gossen or assigns; on the Northeast by lands of Emile Cormier, Mrs. L. Castille and Noah Stelly or assigns; on the Southeast by lands of J. Ovey Arceneaux; on the Southwest by lands of J. Ovey Arceneaux and P. N. Cormier or assigns.

Tract No. 2: A certain tract of land containing 50 acres, more or less, situated in Section 1, and 12, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of Mrs. T. G. Petitjean; on the East by lands of T. Blanchard Est., or assigns; on the Souht by lands of Mrs. T. G. Petitjean and T. Blanchard Est., or assigns; on the West by Public Road and Lands of Waddy Arceneaux.

A-17. Continental Lease No. 68910, dated September 13, 1949, between J. Willie Lyons, Lessor, and W. Brooke Hamilton, Lessee, recorded under File No. 224713, Book W-9, Page 91, and as amended by an instrument dated June 25, 1954, executed by J. Willie Lyons and recorded under Entry No. 266838, covering and affecting lands described as follows, to-wit:

A certain tract of land containing 38 acres, more or less, situated in Section 1, Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of D. Cormier; on the East by lands of Allen J. Faul; on the South by lands of Noah Stelly and Elmo Credeur; on the West by lands of Elmo Credeur and Mrs. L. Castile.

A-18. Continental Lease No. 68911, dated September 8, 1949, between Elmo Credeur, Lessor, and W. Brooke Ham-

ilton, Lessee, recorded under File No. 224712, Book W-9, Page 89, and as amended by an instrument dated June 25, 1954, executed by Elmo Credeur and recorded under Entry No. 266842, covering and affecting lands described as follows, to-wit:

A certain tract of land containing 20 acres, more or less, situated in Section Forty Six (46), Township 9 South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the Northwest by lands of Mrs. L. Castile; On the Northeast by lands of W. Lyons; on the Southeast by lands of Noah Stelly and Ovey Arceneaux; on the Southwest by lands of Ovey Arceneaux.

A-19, Continental Lease No. 68912, dated August 30, 1949, between J. Walter Arceneaux, Lessor, and W. Brooke Hamilton, Lessee, recorded under File No. 226593, Book E-10, Page 306, as amended by an instrument dated July 16, 1954, executed by J. Walter Arceneaux and recorded under Entry No. 267173, covering and affecting lands described as follows, insofar but only insofar as said instruments cover 18.86 acres, described as follows, to-wit:

A certain tract of land containing 18.86 acres, more or less, situated in Sections Three (3) and Forty Seven (47), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

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On the Northwest by lands of Arnold Kahn et al; on the Northeast by lands of Dumas Cormier; on the Southeast by lands of J. Weston Arceneaux; on the Southwest by lands of Martin Petitjean.

A-20. Continental Lease No. 68913, dated September 1, 1949, between J. Weston Arceneaux, et al, Lessor, and W. Brooke Hamilton, Lessee, recorded under File No. 226591,

Book E-10, Page 298, as amended by an instrument dated July 17, 1954, executed by J. Weston Arceneaux, et al, and recorded under Entry No. 267172, covering and affecting lands described as follows, insofar but only insofar as said instruments cover 28.29 acres, to-wit:

> A certain tract of land containing 28.29 acres, more or less, situated in Sections Three (3) and Forty Seven (47), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:
>
> On the Northwest by lands of J. Walter Arceneaux; on the Northeast by lands of Dumas Cormier; on the Southeast by lands of Lennie Arceneaux; on the Southwest by lands of Martin Petitjean.

A-21. Continental Lease No. 68914, dated September 1, 1949, between Emile J. Cormier, Lessor, and W. Brooke Hamilton, Lessee, recorded under File No. 224707, Book W-9, Page 79, and as amended by an instrument dated June 24, 1954, executed by Felix J. Castille and recorded under Entry No. 266841 covering and affecting lands described as follows, to-wit:

> A certain tract of land containing 30 acres, more or less, situated in Section 46, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded as follows, to-wit:
>
> On the Northeast by lands of Emilie Navarre or assigns; in the Southeast by lands of Mrs. Leonard Castile or assigns; on the Southwest by lands of Ovey Arceneaux; on the Northwest by lands of Ovey Arceneaux, Isaac Melanson, and Mrs. Bertrand Seaux or assigns.

A-22. Continental Lease No. 68921, dated August 29, 1949, between Eugene Dupuis, et al, Lessor, and F. J. Muller, Lessee, recorded under File No. 221531, Book V-9,

Page 25, and as amended by an instrument dated June 30, 1954, executed by Eugene Dupuis et al, and recorded under Entry No. 266837, covering and affecting lands in Acadia Parish, Louisiana, described as follows, to-wit:

48 acres, more or less, located in Section 11, Township 9 South, Range 2 East, bounded North by Waddy Arceneaux and Elton Arceneaux; East by Waddy Arceneaux and Edward Arceneaux; South by Waddy Arceneaux and Alfred Webber, West by Waddy Arceneaux and Leonce Breaux.

A-23. Continental Lease No. 68922, dated February 14, 1952, between Gaston Doucet, Lessor, and F. J. Muller, Lessee, recorded under File No. 250587, Book I-11, Page 271, and as amended by an instrument dated January 14, 1957, executed by Gaston Doucet and by Continental Oil Company, et al, recorded under Entry No. 286505, covering and affecting lands in Acadia Parish, Louisiana, described as follows, to-wit:

5.5 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

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On the Northeast by lands of A. Petitjean, John Trahan; Southeast by lands of A. Petitjean; Southwest by lands of A. Petitjean; West by lands of Paved Highway and/or R. R. Right of Way and/or Isaac Cain.

A-24. Continental Lease No. 68923, dated February 14, 1952, between Azema Moss, et vir, Lessor, and F. J. Muller, Lessee, recorded under File No. 250589, Book I-11, Page 276, and as amended by an instrument dated January 17, 1957, executed by Adolph Petitjean and by Continental Oil Company et al, recorded under Entry No. 286503, covering

and affecting lands in the Parish of Acadia, State of Louisiana, described as follows, to-wit:

8 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of L. Hulin and C. Hulin; Southeast by lands of M. and A. Petitjean; Southwest by lands of Adolph Petitjean; Northwest by lands of Adolph and Manuel Petitjean, also Northeast by lands of M. and A. Petitjean;

4.2 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Felix Falcon; Southeast by lands of John Trahan; Southwest by lands of Adolph Petitjean; Northwest by lands of Isaac Hanks;

2 acres of land, more or less, located in Section 48 and or 40 and or 41, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Mrs. C. J. Moss and or Bayou Wikoff and or Rayne Land Co.; Southeast by lands of Bayou Wikoff and or Isaac Hanks; Southwest by lands of Leo Moss; Northwest by lands of Bayou Wikoff and or Rayne Land Company.

A-25. Continental Lease No. 68924, dated January 31, 1952, between Alfred Weber, Lessor, and F. J. Muller, Lessee, recorded under File No. 250626, Book I-11, Page 371, covering and affecting lands described as follows, to-wit:

41 acres of land, more or less, located in Section 11, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the North by lands of Eug. Dupuis; East by lands of Curtis Johnson; South by lands of Clarence Meche; West by lands of W. Arceneaux.

A-26. Continental Lease No. 68925, dated February 1, 1952, between Waddy Arceneaux, Lessor, and F. J. Muller, Lessee, recorded under File No. 250628, Book I-11, Page 376, insofar but only insofar as said lease covers 67.76 acres, in Acadia Parish, Louisiana, described in two tracts as follows, to-wit:

33.88 acres of land, more or less, located in Section 11, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the North by lands of Gerard Mouton, David Stutes; East by lands of David Stutes, Eug. Dupuis; South by lands of Eug. Dupuis; West by lands of Leonce Breaux, Gerard Mouton;

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33.88 acres of land, more or less, located in Section 11, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the North by lands of Eug. Dupuis; East by lands of Eug. Dupuis, Alfred Webber; South by lands of L. Caruther, Mrs. Theophile Petitjean.

A-27. Continental Lease No. 68926, dated February 13, 1952, between Clemence H. Gussman, a widow, Lessor, and F. J. Muller, Lessee, recorded under File No. 250781, Book J-11, Page 36, and as amended by an instrument dated February 12, 1957, by Clemence H. Gussman and by Continental Oil Company, et al, recorded under Entry No. 289149, covering and affecting lands in Acadia Parish, Louisiana described as follows, to-wit:

4 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Martin Petitjean; Southeast by lands of A. L. Comeaux; Southwest by lands of Mrs. Clement Hulin, Adolph and Manuel Petitjean, Northwest by lands of John Falcon Estate.

A-28. Continental Lease No. 68927, dated February 18, 1952, between Ursin Trahan, Lessor, and F. J. Muller, Lessee, recorded under File No. 250783, Book J-11, Page 41, and as amended by an instrument dated January 14, 1957, by Ursin Trahan and by Continental Oil Company, et al, recorded under Entry No. 286502, covering and affecting lands in Acadia Parish, Louisiana described as follows, to-wit:

8 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of John Falcon Estate; Northwest by lands of Bayou Wikoff and or W. Arceneaux; Southeast by lands of John Trahan; Southwest by lands of John Trahan;

3.8 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of John Trahan; Southeast by lands of John Trahan; Southwest by lands of Felix Falcon; Northwest by lands of Bayou Wikoff and or W. Arceneaux;

16 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of John Falcon Estate; Southeast by lands of Manuel Petitjean; Southwest by lands of A. Petitjean; Northwest by lands of John Trahan.

A-29. Continental Lease No. 68928, dated February 12, 1952, by and between Marie Petitjean, Lessor, and F. J. Muller, Lessee, recorded under File No. 250789, Book J-11, Page 58, covering and affecting lands described as follows, to-wit:

41 acres of land, more or less, located in Section 48, and or 14, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the Northeast by lands of Mrs. C. Hulin; Southeast by lands of Manuel

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Petitjean; Southwest by lands of Manuel Petitjean; Northwest by lands of Manuel and Adolph Petitjean.

A-30. Continental Lease No. 68929, dated February 13, 1952, between Rosa Hulin Falcon, et al, Lessor, and F. J. Muller, Lessee, recorded under File No. 250791, Book J-11, Page 63, covering and affecting lands described as follows, to-wit:

53 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the Northeast by lands of Martin Petitjean; Southeast by lands of A. C. Gossman; Southwest by lands of Adolph and Manuel Petitjean, Ursin Trahan, John Trahan, Bayou Wikoff and or W. Arceneaux; Northwest by lands of Bayou Wikoff and or W. Arceneaux.

A-31. Continental Lease No. 68930, dated February 18, 1952, between John Trahan, Lessor, and F. J. Muller, Lessee, recorded under File No. 250838, Book J-11, Page 178, and as amended by an instrument dated January 14, 1957, by John Trahan and by Continental Oil Company, et al, recorded under Entry No. 286504, covering and affecting lands described as follows: to-wit:

20.3 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the Northeast by lands of Ursin Trahan, John Falcon Estate; Southeast by lands of Ursin Trahan; Southwest by lands of Gaston Doucet, Azema Moss Dogey and Honora Doget, Ursin Trahan; Northwest by lands of Azema Moss Dogey and Honora Doget, Felix Falcon, Ursin Trahan, Bayou Wikoff and or W. Arceneaux.

A-32. Continental Lease No. 68931, dated February 28, 1952, between J. Leeward Richard, et al, Lessor, and F. J. Muller, Lessee, recorded under File No. 251056, Book K-11, Page 130, covering and affecting lands described as follows, to-wit:

4 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the Northeast by lands of Martin Petitjean; Southeast by lands of Lenis J. Hulin; Southwest by lands of Adolph Petitjean; Northwest by lands of A. L. Comeaux;

A-33. Continental Leas No. 68932, dated February 13, 1952, between Cecile Gary Hulin, et al, Lessor, and F. J. Muller, Lessee, recorded under File No. 251058, Book K-11,

Page 135, covering and affecting lands in Acadia Parish, Louisiana, described as follows, to-wit:

49.31 acres of land, more or less, located in Section 48, and or 11, and or 14, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of John Bearb; on the Southeast by lands of Gerard Mouton and Manuel Petitjean; Southwest by lands of Marie Petitjean, Manuel and Adolph Petitjean and or Mrs. Azema Moss Dogey; Northwest by lands of Clerphe Hulin.

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8 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Mrs. A. C. Gussman, A. L. Comeaux; Southeast by lands of Adolph Petitjean; Southwest by lands of Adolph Petitjean; Northwest by lands of Adolph and Manuel Petitjean; LESS AND EXCEPT a certain tract of land containing 32.48 acres, more or dess, located in Sections 4 and 48, Township 9 South, Range 2 East bounded now or formerly as follows: On the Northeast by land of John Bearb; North by the South line of W. Petitjean No. 1 Unit (Klumpp "D" Sand) created October 1, 1957 by Order No. 307-D, recorded October 21, 1957 in Conveyance Book X-16, Folio 28 under Entry No. 291031 of the Records of Acadia Parish; on the Southwest by land of Adolph Petitjean et al and Marie Petitjean; on the Southwest by Gerard Mouton and Adolph Petitjean et al, said 32.48 acres having been released by instrument dated September 5, 1958, filed for record September 18, 1958 under Entry No. 298341 of the Conveyance Records of Acadia Parish, Louisiana, executed by Continental Oil Company, et al

A-34. Continental Lease No. 68933, dated February 29, 1952, between Lenes J. Hulin, Lessor, and F. J. Muller, Lessee, recorded under File No. 251054, Book K-11, Page 125, covering and affecting lands described as follows, to-wit:

> 4 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:
>
> On the Northeast by lands of Martin Petitjean; Southeast by lands of Clerphe Hulin; Southwest by lands of Mrs. Azema Moss Dogey and or Adolph and Manuel Petitjean; Northwest by lands of A. L. Richard or assigns;

A-35. Continental Lease No. 68934, dated March 10, 1952, between Alcee Gautreaux, Lessor, and F. J. Muller, Lessee, recorded under File No. 251060, Book K-11, Page 141, and as amended by an instrument dated February 16, 1957, by Alcee Gautreaux and by Continental Oil Company, et al, recorded under Entry No. 289148, covering and affecting lands described as follows, to-wit:

> 4.5 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:
>
> On the Northeast by lands of Manuel and Adolph Petitjean; Southeast by lands of Gaston Doucet; Southwest by lands of A. Petitjean; Northwest by lands of Bayou Wikoff and or Rayne Land Co.

A-36. Continental Lease No. 68935, dated February 13, 1952, between Lillie H. Comeaux, Lessor, and F. J. Muller, Lessee, recorded under File No. 251143, Book K-11, Page 315, and as amended by an instrument dated January 14, 1957, by Lillie H. Comeaux, and by Continental Oil Com-

pany, et al, recorded under Entry No. 286506, covering and affecting lands described as follows, to-wit:

4 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the Northeast by lands of Martin Petitjean; Southeast by lands of A. L.

Richard; Southwest by lands of Mrs. C. Hulin, Adolph Petitjean; Northwest by lands of A. C. Gussman.

A-37. Continental Lease No. 68936, dated February 13, 1952, by and between Clerphe Hulin, Lessor, and F. J. Muller, Lessee, recorded under File No. 251145, Book K-11, Page 320, covering and affecting lands described as follows, to-wit:

4 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the Northeast by lands of John Bearb; Southeast by lands of Mrs. Clement Hulin; Southwest by lands of Mrs. Azemar Moss Dogey; Northwest by lands of Lenis Hulin.

A-38. Continental Lease No. 68937, dated November 3, 1952, between J. Weston Arceneaux, Lessor, and Henry T. Duson, Lessee, recorded under File No. 255403, Book Y-11, Page 287, covering and affecting lands described as follows, to-wit:

Five and 17/100 (5.17) acres in Section Forty-Seven (47), Township 9 South, Range Two (2) East, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the Northwest and Northeast by Bayou Wikoff; on the Southeast by Bayou Wikoff and Land of Agnes Janice Romero; and on the Southwest by lands of J. Tenas Arceneaux.

A-39. Continental Lease No. 68938, dated November 3, 1952, between J. Walter Arceneaux, Lessor, and Henry T. Duson, Lessee, recorded under File No. 255401, Book Y-11, Page 281, covering and affecting lands described as follows, to-wit:

10.34 acres, more or less, in Section 47, Township 9 South, Range 2 East, Louisiana Meridian, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the Southwest by land of J. Warren Arceneaux; on the Northwest by land of Agnes Janice Romero; on the Southeast by land of Arnold Kahn, et al; and on the Northeast by Bayou Wikoff and J. S. Arceneaux.

A-40. Continental Lease No. 68939, dated November 3, 1952, between J. Tenas Arceneaux, Lessor, and Henry T. Duson, Lessee, recorded under File No. 255402, Book Y-11, Page 284, covering and affecting lands described as follows, to-wit:

5.17 acres in Section 47, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the Northwest by Bayou Wikoff; on the Northeast by land of J. Weston Arceneaux; on the Southeast by land of Agnes Janice Romero; and on the Southwest by land of J. Warren Arceneaux.

A-41. Continental Lease No. 68940, dated December 6, 1952, between Arnold Kahn, et al, Lessor, and Henry T. Duson, Lessee, recorded under File No. 255968, Book A-12, Page 296, covering and affecting lands described as follows, to-wit:

All of Lessors' right, title and interest, warranted to be at least one-half (½) in and to the following described land in Acadia Parish, Louisiana:

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(1st) Ten and 34/100 (10.34) acres, more or less, situated in Section Forty-Seven (47), Township Nine (9) South, Range Two (2) East, Louisiana Meridian, bounded now or formerly as follows:

On the North by land of J. Walter Arceneaux; on the East by land of J. S. Arceneaux; on the South by land of J. Warren Arceneaux; and on the West by land of J. Warren Arceneaux;

(2nd) Eighteen and 86/100 (18.86) acres, more or less, situated in Section Three (3) and Forty-seven (47), Township Nine (9) South, Range Two (2) East, Louisiana Meridian, bounded now or formerly as follows:

On the North by land of J. Warren Arceneaux; and on the East by land of Dumas Cormier; on the South by land of J. Walter Arceneaux, and on the West by land of W. Petitjean and Co.

A-42. Continental Lease No. 68941, dated February 18, 1953, between Agnes Janice Romero, Lessor, and Henry T. Duson, Lessee, recorded under File No. 257326, Book F-12, Page 306, covering and affecting lands described as follows, to-wit:

Five and 17/100 (5.17) acres, more or less, in the Northeast part of Section 47, Township 9 South, Range 2 East, Louisiana Meridian, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the North by land of J. Tenas Arceneaux and J. Weston Arceneaux; on the East by Bayou Wikoff;

on the South by land of J. Walter Arceneaux; and on the West by land of J. Warren Arceneaux and/or Bayou Wikoff.

A-43. Continental Lease No. 68958, dated March 25, 1953, between Freddie Arceneaux, Lessor, and F. J. Muller, Lessee, covering a ¼ interest, recorded under File No. 258251, Book I-12, Page 308, and

Lease dated March 25, 1953, between Warren J. Arceneaux, Lessor, and Freddie Arceneaux, Lessee, recorded under File No. 258248, Book I-12, Page 303, covering and affecting lands described as follows to-wit:

32 acres of land, more or less, located in Section 3, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the Northeast by lands of Claude Cahanan, Pierre Numa Cormier; Southeast by lands of J. Warren Arceneaux; Southwest by lands of J. S. Arceneaux; Northwest by lands of Claude Cahanan.

A-44. Continental Lease No. 68959, dated February 12, 1952, between Adolph Petitjean, et al, Lessor, and F. J. Muller, Lessee, recorded under File No. 250787, Book J-11, Page 51, and as amended by an instrument dated February 15, 1957, by Adolph Petitjean, et al, and by Continental Oil Company, et al, recorded under Entry No. 289793, covering and affecting lands described as follows, insofar but only insofar as said lease covers 317.18 acres of land in Acadia Parish, Louisiana, to-wit;

(1) 21 acres of land, more or less, located in Section 20, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Leon Mire, Bayou Wikoff and or Rayne Land Co.; East by lands of Rail-

road Right-of-Way and or Black Top Highway and or Adolph Petitjean; Southwest by lands of Frank Falcon, Leonard Falcon, et al; West and Northwest by lands of Bayou Wikoff and or Rayne Land Co.;

(2) 4 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Isaac Cain; East by lands of Railroad Right-of-Way and or Blacktop Highway and or Adolph Petitjean; Southwest by lands of Emile Petitjean; West and Northwest by lands of Bayou Wikoff and or Rayne Land Co.;

(3) 2.4 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Maud Lavergne; East by lands of Railroad Right-of-Way and or Blacktop Highway and or Adolph Petitjean; Southwest by lands of Isaac Cain, Simeon Broussard, et al; Northwest by lands of Bayou Wikoff and or Rayne Land Co.;

(4) 1.2 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Mrs. Felix Trahan; East by lands of Bayou Wikoff and or Railroad Right-of-Way and or Blacktop and or Waddy Arceneaux; Southwest by lands of C. J. Moss; Northwest by lands of Bayou Wikoff and or Rayne Land Company;

(5) 2 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Felix Falcon; Southeast by lands of Felix Falcon; Southwest by lands of Isaac Hanks; Northwest by lands of Bayou Wikoff and or Waddy Arceneaux;

(6) 3.5 acres of land, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Isaac Hanks, Azema Moss Doget & Honore; Southeast by lands of John Trahan; Southwest by lands of Gaston Doucet; West by lands of Blacktop Highway and or Railroad Right-of-Way and or Manuel and Adolph Petitjean and Maud Lavergne.

(7) 19.5 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Jean Falcon, Rosa Hulin Falcon, Clemence H. Gossman; Southeast by lands of Mrs. Clement Hulin; Southwest by lands of Adolph Petitjean; Northwest by lands of Ursin Trahan;

(8) 16 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Lilly H. Comeaux, Leewood and Rodney Rich-

ard, Lenas Hulin; Southeast by lands of Mrs. Asemar Moss Dogey; Southwest by lands of Adolph Petitjean; Northwest by lands of Mrs. Clement Hulin;

(9) 61.08 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Denat Hulin, Mrs. C. Hulin; Southeast by lands of Marie Petitjean Faulk; Southwest by lands of Manuel Petitjean; Adolph Petitjean, Mrs. Asemar Moss Dogey, Northwest by lands of Mrs. Asemar Moss Dogey;

(10) 99.3 acres of land, more or less, located in Section 48 and 20, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Gaston Doucet, Ursin Trehan, Manuel and Adolph Petitjean, Mrs. Clement Hulin, Mrs. Asemar Moss Dogey; Southeast by lands of Manuel Petitjean; Southwest by lands of Leonard Joseph and Clodomie Falcon, Frank Falcon; West by lands of Blacktop Highway and or Railroad Right-of-way and or Adolph Petitjean, Leon Mire, Emile Petitjean.

(11) 87.20 acres of land, more or less, located in Sections 48, 20 and or 14, Township 9 South, Range 2 East, bounded now or formerly as follows:

On the Northeast by lands of Manuel and Adolph Petitjean, Marie Petitjean Faulk; Southeast by lands of Manuel Petitjean, Southwest by lands of Leonard Falcon, Leonard Joseph and Clodomie Falcon; Northwest by lands of Adolph Petitjean.

A-45. Continental Lease No. 68960, dated February 13, 1952, between Leonce Breaux, Lessor, and F. J. Muller, Lessee, recorded under File No. 250785, Book J-11, Page 46, covering and affecting lands described as follows, insofar but only insofar as said lease covers 25.6 acres described as follows, to-wit:

25.6 acres of land, more or less, located in Section 11, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:

On the North by lands of Martin Petitjean, Gerard Mouton; East by lands of Eugene Dupuis, W. Arceneaux; South by lands of John Bearb, Gerard Mouton; West by lands of Gerard Mouton, Martin Petitjean.

A-46. Continental Lease No. 73260, dated January 2, 1954, between Stamm-Raymond, Inc., as Lessor, and Sun Oil Company, as lessee, recorded in Book D-13, Page 248, under Entry No. 263978, insofar but only insofar as said lease covers the following described land, to-wit:

A certain tract of land situated in Section 1, Township 9 South, Range 2 East, Louisiana Meridian, Acadia Parish, Louisiana, containing 40 acres, more or less, and bounded as follows:

North by lands of Armogene Meche; South by Noah Stelly; East by Andre Menard; West by Dupreville Cormier and J. Willie Lyons.

A-47. Continental Lease No. 74275, dated November 19, 1954, between Rosa Breaux Broussard, et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 270021, Book Y-13, Page 437, covering and affecting lands described as follows, to-wit:

A2656

That certain tract of land situated in the Western portion of irregular Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, containing 1½ acres, more or less, and bounded now or formerly on the North by Adolph and Manuel Petitjean, South by Alcee Gautreaux, East by Railroad and or blacktop highway, and West by Bayou Wikoff.

A-48. Continental Lease No. 74276, dated November 26, 1954, between Albert Mire, et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 270023, Book Y-13, Page 445, covering and affecting lands described as follows, to-wit:

> That certain tract of land situated in Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, containing 2.40 acres, more or less, bounded now or formerly on the North by Emile Petitjean, South by Adolph Petitjean, East by Adolph Petitjean or blacktop highway, and West by Bayou Wikoff.

A-49. Continental Lease No. 74277, dated November 26, 1954, between John Domingue, et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 270022, Book Y-13, Page 441, covering and affecting lands described as follows, to-wit:

> That certain tract of land located in the extreme Northwestern part of irregular Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, containing 1.20 acres, more or less, bounded now or formerly as follows: North, South and East by Bayou Wikoff; and West by Adolph and Manuel Petitjean.

A-50. Continental Lease No. 74299, dated December 22, 1953, between Mearl Louis Arceneaux, as Lessor, and James C. Arceneaux, Jr., as Lessee, recorded in Book M-13, Page 458, under Entry No. 266328, and

Lease dated December 22, 1953, by and between Alberta Arceneaux Miller, et al, as Lessor, and James C. Arceneaux, as Lessee, recorded in Book M-13, Page 461, under Entry No. 266329, as ratified December 23, 1954, by Mearl Louis Arceneaux, et al, recorded under Original Act No. 270307, Book ....., Page ....., covering the following described land, to-wit:

(A2656).

A certain tract of land situated in Sections 3 and 47, Township 9 South, Range 2 East, Louisiana Meridian, Acadia Parish, Louisiana, containing 18.86 acres, bounded Northwest by J. Walter Arceneaux, Northeast by Dumas Cormier, Southeast by J. Weston Arceneaux, and Southwest by W. Petitjean and Company.

A-51. Continental Lease No. 76637, dated February 17, 1955, between the State of Louisiana, as Lessor and Continental Oil Company, as Lessee, recorded in Book T-14, Page 465, under Entry No. 275780, covering the following described land, to-wit:

Tract 5962—Acadia Parish, Louisiana—All of the lands now or formerly constituting the beds and bottoms of all lakes, bays, coves, bayous, rivers and any other water bottoms of every nature and description, and all islands and other lands formed by accretion or reliction, except tax lands, owned by the State of Louisiana and not under lease as of the date of this application; namely, December 27, 1954, situated in Acadia Parish, Louisiana, within the following described boundaries, to-wit:

Begin at the Southernmost corner of Section 48, Township 9 South, Range 2 East; go thence Northwesterly along the West line of said Section 48 a distance of 5,500.00 feet to point of beginning; thence go Northeasterly at right angles 11,660.00 feet to

A2657

intersection with the East line of Section 46, Township 9 South, Range 2 East; thence Northwesterly along said East line of Section 46 a distance of 2,330.00 feet to intersection of East line of said Section 46 with the South line of Township 8 South, Range 2 East, thence Westerly along said South line of Township 8

South, Range 2 East, a distance of 4,050.00 feet; thence go Southwesterly on a line parallel to the Southeast boundary of the tract herein described a distance of 10,100.00 feet to the intersection of said line with the West line of Section 39, Township 9 South, Range 2 East; thence Southeasterly along the West line of Section 39 and the Southeasterly extension of said West line of Section 39, a distance of 4,970.00 feet; thence Northeasterly a distance of 1,700.00 feet to a point of beginning, including a particular but not limited to beds and bottoms of Bayou Wikoff, the State owned property lying within said boundaries being estimated to contain approximately 45.0 acres, all more fully shown outlined in red on a plat on file in the State Land Office, less and except the most southern part of Bayou Wikoff that contains 5.30 acres, more or less, bounded northeast by a line which is a northwest projection of the southwest line of Adolph Petitjean et al 26.25 acre tract located in the northeast part of Section 20, T-9-S, R-2-E.

A-52. Continental Lease No. 76642, dated March 3, 1955, between Camille Comeaux, et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 271690, Book F-14, Page 173, covering and affecting lands described as follows, to-wit:

Tract 1—97/100 acres bounded now or formerly on the North by Adolph Petitjean, et al, and/or the Heirs of Joseph J. Trahan, on the East by Adolph Petitjean and Gaston Doucet, on the South by the Heirs of Theophile Petitjean and/or Alcee Gautreaux, on the West by Alcee Gautreaux and Sidney Broussard et al. Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana.

Tract 2—17/100 acres bounded now or formerly on the North by Leo Moss and/or Azema Moss Dogey,

on the East by Isaac Hanks and/or Adolph Petitjean, on the South by the Heirs of Joseph J. Trahan or assigns and/or Adolph Petitjean, and on the West by Lene Lavergne et al. Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana.

A-53. Continental Lease No. 76646, dated December 15, 1954, between Nancy Mouton Davis, as Lessor, and Continental Oil Company, as Lessee, recorded in Book G-14, Page 233, under Entry No. 271991, and

Lease dated December 15, 1954, between Lucille Mouton Meche, et al, as Lessor, and Continental Oil Company, as Lessee, recorded in Book F-14, Page 539, under Entry No. 271798, and

Lease dated December 15, 1954, between L. C. Breaux, as lessor, and Continental Oil Company, as Lessee, recorded in Book H-14, Page 539, under Entry No. 272408, covering the following described land, to-wit:

That certain tract of land containing 5 acres, more or less, situated in Section 47, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows: On the Northwest and Southwest by Bayou Wikoff; on the Northeast by lands of J. Tenas Arceneaux, Agnes Janice, J. Walter Arceneaux and Arnold Kahn, et al; on the Southeast by lands of J. Warren Arceneaux.

A-54. Continental Lease No. 76691, dated October 15, 1953, between Leo Moss, as Lessor, and F. J. Muller, as Lessee, recorded under Entry No. 262099, Book W-12, Page

149, covering and affecting lands insofar, but only insofar as said lease covers 3.6 acres of land, in Acadia Parish, Louisiana, described as follows, to-wit:

3.6 acres, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows: on the Northeast by lands of Jean Falcon; East by lands of Railroad Right of Way and/or Blacktop Highway; Southwest by lands of Maude Lavergne; Northwest by lands of Rayne Land Co.

A-55. (a) Continental Lease No. 76708, dated March 25, 1955, between Felix Alleman, et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 272797, Book J-14, Page 270, covering the following described lands, in Acadia Parish, Louisiana, to-wit:

A certain tract of land containing 1.5 acres, more or less, situated in the Northwest portion of Section 47, Township 9 South, Range 2 East, and being bounded now or formerly as follows: North by Bayou Wikoff; South by W. Petitjean and Company; East and West by Claby Dugas.

(b) Lease dated May 7, 1956, between Freedia Threase Seaux Romero, et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 281357; and

Lease dated May 28, 1957, between Leroy Alleman, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 288796, Book P-16, Page 114; and

Lease dated June 2, 1958, but effective May 1, 1955, between Felecia Alleman Douga, as Lessor, and Robert H. Thompkins, as Lessee, recorded under Entry No. 295776, covering the following described lands, in Acadia Parish, Louisiana, to-wit:

Being a tract of land containing .86 acre, situated in Section 47, Township 9 South, Range 2 East, being bounded by lands owned now or formerly as follows: Northeast by Claby Dugas, Southeast by W. Petitjean

and Company, Southwest by Claby Dugas, Northwest by Bayou Wikoff.

(c) Lease dated January 8, 1954, between Ovey Alleman, as Lessor, and John J. Doyle, as Lessee, recorded under Entry No. 264958, Book H-13, Page 343, insofar but only insofar as said lease covers the following described land, in Acadia Parish, Louisiana to-wit:

1.5 acres, more or less, in the Northwestern portion of Section 47, Township 9 South, Range 2 East, and bounded North and West by Bayou Wikoff; South and West and North and East by Claby Dugas; and South by W. Petitjean & Company or assigns.

A-56. Continental Lease No. 76855, dated May 11, 1955, between Mrs. Venola Mire Gaudet, et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 273709, Book M-14, Page 273, and,

Lease dated July 18, 1955, between Maurice Mire, et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 274675, Book T-14, Page 567, covering and affecting lands insofar, but only insofar as said leases cover 1.5 acres of land described as follows, in Acadia Parish, Louisiana, to-wit:

A2659

That certain tract of land situated in the western portion of irregular Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, containing 1½ acres, more or less, and bounded now or formerly on the North by Adolph and Manuel Petitjean, South by Alcee Gautreaux, East by railroad and or black top highway, and West by Bayou Wikoff.

A-57. Continental Lease No. 80021, dated May 1, 1955, between John Hilda Young Craven, et al, as Lessor, and

Continental Oil Company, as Lessee, recorded under Entry No. 283747, Book W-15, Page 12; and

Lease dated May 1, 1955, between Edward Arceneaux, et al, as Lessor, and Continental Oil Company, as lessee, recorded under Entry No. 281943, Book Q-15, Page 116; and

Lease dated May 1, 1955, between Walker D. Lyons, Jr., et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 281950, Book Q-15, Page 145; and

Lease dated May 1, 1955, between Jimmie Agnes Eastham Montagne, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 281945, Book Q-15, Page 128; and

Lease dated May 1, 1955, between M. Walter Andrus, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 281948, Book Q-15, Page 137; and

Lease dated May 1, 1955, between Madaline Melchior Andrus, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 281946, Book Q-15, Page 131; and

Lease dated May 1, 1955, between Ellen Arceneaux Rumore, et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 281949, Book Q-15, Page 140; and

Lease dated May 1, 1955, between James C. Arceneaux, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 281947, Book Q-15, Page 134; and

Lease dated May 1, 1955, between Lillie Eastham Gish, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 281944, Book Q-15, Page 125, said leases covering and affecting the following described lands, to-wit:

Lots Six (6) through Twelve (12), inclusive, of the Woodland Tract Partitioned between the heirs of

Homer Arceneaux and his wife, Mathilde Castille, by instrument dated June 26, 1934, recorded in Acadia Parish, Louisiana, in Conveyance Book E-5, Page 86, said tract containing 36 acres, more or less, and being bounded, now or formerly as follows: North by Bayou Wikoff; East by Bayou Wikoff and tract of the Estate of J. S. Arceneaux, Sr., Inc.; South by Lot 5 of the partition of said woodland or tract of J. Warren Arceneaux; and West by tract of J. Warren Arceneaux in Acadia Parish, Louisiana.

A-58. Continental Lease No. 80023, dated January 14, 1956, between Delino Hanks, as Lessor, and Continental Oil Company, as Lessee, recorded in Book D-15, Page 1, under Entry No. 278547, covering and affecting the following described land, to-wit:

That certain tract of land, together with all improvements thereon, containing 0.65 acres, more or less, situated in Sections 1 and 45, Township 9 South, Range 2 East, Acadia Parish, Louisiana, and particularly described as being enclosed within the

following exterior boundary lines: Beginning at a point located North 0 degrees 02 minutes East 1619.9 feet from the southeast corner of a 40.93 acre tract owned by the heirs of Dupreville Cormier, located in Section 1, Township 9 South, Range 2 East, thence running south. 80 degrees 20 minutes west a distance of 298.9 feet to a point, thence north 46 degrees 58 minutes East a distance of 253.4 feet, thence north 81 degrees 01 minutes East a distance of 111.4 feet to a point in the section line separating said Sections 1 and 45, thence South 0 degrees 02 minutes west a distance of 140.6 feet to the point of beginning.

A-59. Continental Lease No. 80037, dated March 13, 1956, between Leah Broussard Murphy, as Lessor, and Louis E. Bernard, as Lessee, recorded under Entry No. 280318, Book J-15, Page 425, covering and affecting lands insofar, but only insofar as said lease covers 1½ acres of land in Acadia Parish, Louisiana, described as follows, to-wit:

> That certain tract of land situated in the western portion of irregular Section 48, Township 9 South, Range 2 East, containing 1½ acres, more or less, and bounded, now or formerly as follows: North by Adolph and Manuel Petitijean; East by railroad and/or black top highway; South by Alcee Gautreaux; and West by Bayou Wikoff.

A-60. Continental Lease No. 83269, dated October 1, 1956, between Adolph Petitjean, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 287204, Book I-16, Page 564, covering and affecting the following described lands, to-wit:

> That certain tract of land containing 0.91 acre situated in the extreme Northwest portion of Section 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, and bounded now or formerly as follows, to-wit: North by Bayou Wikoff, Simeon Broussard, and/or Rayne Land Co., East by Simeon Broussard; South by Bayou Wikoff and/or Rayne Land Co., West by Bayou Wikoff and/or Rayne Land Co.

A-61. Continental Lease No. 83278, dated March 14, 1957, between Police Jury of Acadia Parish, Louisiana, as Lessor, and Robert E. Adams, as Lessee, recorded under Entry No. 287832, Book X-2, Page 173, covering and affecting the following described lands to-wit:

> That certain strip of land situated in the Parish of Acadia, State of Louisiana, containing ¾ of an acre,

more or less, bounded, now or formerly; North by Public road, South by A. Gaspard; East by D. Gaspard; and West by Public Road in Section One (1), Township 9 South, Range 2 East, and being the same property acquired by the Parish of Acadia by deed dated September 23, 1913, recorded in Conveyance Book X-2 at Page 173, Entry No. 38537 of the records of Acadia Parish, Louisiana.

A-62. Continental Lease No. 83288, dated December 9, 1953, between Mary Guidry Navarre, et al, as Lessor, and Charles R. Houssiere, Jr., as Lessee, recorded under Entry No. 262918, Book Z-12, Page 183, as amended by Act of Correction dated December 9, 1953, recorded under Entry No. 273738, Book M-14, Page 333, insofar and only insofar as said lease relates to and affects the Homeseekers "E" Sand, and insofar and only insofar as said lease covers and affects the following described lands, in Acadia Parish, Louisiana, to-wit:

That certain tract of land consisting of .27 acres described in the above oil, gas and mineral lease, which is included and embraced within the confines of Home-

seekers "E" Sand Unit No. 2, Rayne Field, as established by Order 307-A of the Commissioner of Conservation, effective March 1, 1956, recorded as Original No. 279582, Conveyance records, Acadia Parish, Louisiana, the above land being shown on a plat attached to an assignment dated March 1, 1956 executed by General Gas Corporation et al.

A-63. Continental Lease No. 83336, datde February 13, 1958, between Deynoodt Hulin, et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No.

295378, Book M-17, Page 84, covering and affecting the following described land, to-wit:

A certain tract of land containing 32.48 acres, more or less, located in Sections 4 and 48, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows: on the Northeast by lands of John Bearb, North by the South line of the W. Petitjean No. 1 Unit (Klumpp "D" Sand), created October 1, 1957, by Order No. 307-D, recorded October 21, 1957, in Conveyance Book X-16, Folio 28, under Entry No. 291031, of the records of Acadia Parish, on the Southwest by lands of Adolph Petitjean et al, and Marie Petitjean; on the Southeast by Gerard Mouton and Adolph Petitjean et al.

A-64. Continental Lease No. 88701, dated June 3, 1958, but effective February 12, 1959, between Adolph Petitjean et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 295775, Book N-17, Page 482, insofar, but only insofar as said lease covers 334.07 acres in Acadia Parish, Louisiana described as follows, to-wit:

Tr. 1—26.25 acres of land, more or less, (formerly called 21 acres) located in Section 20, T-9-S, R-2-E, bounded now or formerly as follows: On the Northeast by lands of Leon Mire, Bayou Wikoff and/or Rayne Land Co.; East by Railroad R.O.W. and/or Blacktop Highway and/or Adolph Petitjean; Southwest by lands of Frank Falcon, Leonard Falcon, et al; West and Northwest by Bayou Wikoff and/or Rayne Land Co.

Tr. 2—4.31 acres of land, more or less (part of a 5.06 acre tract formerly called 4 acres) located in Section 48, T-9-S, R-2-E, bounded now or formerly as follows: On the North by the South line of Nodosaria Unit No. 1 created by Conservation Department Order No. 307-B effective October 1, 1956 recorded in Acadia

Parish as Original Act No. 284288; Northeast by Alcee Gautreaux; East by Railroad R.O.W. and/or Blacktop Highway and/or Adolph Petitjean; Southwest by lands of Ashton Petitjean, et al; West and Northwest by lands of Bayou Wikoff and/or Rayne Land Co.

Tr. 3—2.67 acres of land more or less, (part of 3.72 acre tract formerly called 3.5 acres) located in Section 48, T-9-S, R-2-E, bounded now or formerly as follows: On the Northeast by lands of Azema Moss et ux; Southeast by lands of John Trahan; Southwest by lands of Gaston Doucet; North by the South line of Nodosaria Unit No. 1 as created by Conservation Department Order No. 307-B effective October 1, 1956 recorded in Acadia Parish as Original Act, No. 284288.

Tr. 4—15.72 acres, more or less (part of a 22.38 acre tract formerly called 19.5 acres) located in Section 48, T-9-S, R-2-E, bounded now or formerly as follows: On the Northeast and East by W. Petitjean & Co. No. 1 Unit as created by Conservation

Department Order No. 307-D for the Klumpp "D" Sand effective October 1, 1957 recorded in Acadia Parish as Original Act No. 291031; Southeast by Cecil Gary Hulin, et al; Southwest by lands of Adolph Petitjean; Northwest by lands of Ursin Trahan.

Tr. 5—11.46 acres, more or less, (part of a 17.35 acre tract, formerly called 16 acres) located in Section 48, T-9-S, R-2-E, bounded now or formerly as follows: On the Northeast by W. Petitjean & Co. No. 1 Unit created by Conservation Department Order No. 307-D for the Klumpp "D" Sand effective October 1, 1957 recorded in Acadia Parish as Original Act No. 291031; Southeast by lands of Mrs. Azema Moss et ux; South-

west by lands of Adolph Petitjean, et al; Northwest by lands of Cecil Gary Hulin, et al.

Tr. 6—59.63 acres, more or less, (part of a 62.52 acre tract formerly called 61.08 acres) located in Section 48, T-9-S, R-2-E, bounded now or formerly as follows: On the Northeast by lands of Deynoodt Hulin, et al, Mrs. C. Hulin, and W. Petitjean & Co. No. 1 Unit created by Conservation Department Order No. 307-D for the Klumpp "D" Sand effective October 1, 1957 recorded in Acadia Parish as Original Act No. 291031; Southeast by lands of Marie Petitjean; Southwest by lands of Manuel Petitjean, Adolph Petitjean, Azema Moss, et ux, Northwest by lands of Azema Moss, et ux.

Tr. 7—214.03 acres, more or less, (formerly called tracts of 99.3 acres and 87.2 acres) located in Sections 48, 20, or 14, T-9-S, R-2-E, bounded now or formerly as follows: Northeast by lands of Gaston Doucet, Ursin Trahan, Manuel and Adolph Petitjean, Cecil Gary Hulin, et al, Mrs. Azema Moss, et ux, Marie Petitjean; Southeast by lands of Manuel Petitjean, et al; Southwest by lands of Leonard Falcon, Leonard Joseph E. Clodomie Falcon, Frank Falcon; West by Blacktop Highway and/or Railroad R.O.W. and/or Adolph Petitjean, Leon Mire, Ashton Petitjean, et al.

A-65. Continental Lease No. 88705, dated June 6, 1958, effective February 14, 1959, between Gaston Doucet, as Lessor, and Continental Oil Company, as Lessee, Recorded under Entry No. 296009, Book O-17, Page 280, covering the following described land, in Acadia Parish, Louisiana, to-wit:

5.51 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows: on the North by the south

line of Nodosaria Unit No. 1 as created by conservation department order No. 307-B effective October 1, 1956, recorded under original Act No. 284288; northeast by lands of Adolph Petitjean, John Trahan; southeast by lands of Adolph Petitjean; southwest by lands of Adolph Petitjean; west by lands of paved highway and/or R.R. right of way and/or C. Comeaux.

A-66. Continental Lease No. 88706, dated June 6, 1958, but effective March 10, 1959, between Alcee Gautreaux, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 296010, Book O-17, Page 284, covering the following described land, in Acadia Parish, Louisiana, to-wit:

.71 acres of land more or less located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows: On the north by the south line of Nodosaria Unit No. 1 as created by Conservation Department Order No. 307-B effective October

1, 1956, recorded as original act No. 284288; Southwest by lands of Adolph Petitjean; East by R. R. Right of Way and/or C. Comeaux and/or Mrs. T. Petitjean.

A-67. Continental Lease No. 88707, dated June 10, 1958, but effective February 18, 1959, between John Trahan, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 296007, Book O-17, Page 272, as amended by Act of Correction dated July 21, 1958, recorded under Entry No. 297168, Book S-17, Page 583, covering the following described lands, in Acadia Parish, Louisiana, to-wit:

5.56 acres of land, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows: Northeast by the South line

of Nodosaria No. 1 as created by Conservation Department Order No. 307-B effective October 1, 1956, recorded as Original Act No. 284288; Northwest by Felix Falcon and Adolph Petitjean; Southwest by Gaston Doucet; Southeast by Ursin Trahan.

A-68. Continental Lease No. 88708, dated June 9, 1958, but effective February 18, 1959, between Ursin Trahan, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 296008, Book O-17, Page 276, covering the following described lands in Acadia Parish, Louisiana, to-wit:

13.78 acres of land more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows: On the Northeast by the South line of Nodosaria Unit No. 1 as created by Conservation Department Order No. 307-B, effective October 1, 1956, recorded as Original Act No. 284288; on the Northwest by lands of John Trahan; on the Southwest by lands of Adolph Petitjean; on the Southeast by lands of No. 1 Unit as created by Conservation Department Order No. 307-D for the Klumpp "D" Sand, effective October 1, 1957 recorded as Original Act No. 291031.

A-69. Continental Lease No. 88709, dated June 17, 1958, but effective February 14, 1959, between Adolph Petitjean, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 296059, Book O-17, Page 393, covering the following described lands in Acadia Parish, Louisiana, to-wit:

2.74 acres, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows: North by the South line of Nodosaria Unit No. 1 as create dby Conservation Department Order 307-B effective October 1, 1956, recorded as Original

Act No. 284288; Northeast by lands of Felix Falcon, Southeast by lands of John Trahan and Southwest by Adolph Petitjean.

8.41 acres, more or less, located in Section 48, Township 9 South, Range 2 East, bounded now or formerly as follows: Northeast by W. Petitjean & Co. No. 1 Unit as created by Conservation Department Order No. 307-D for the Klumpp "D" Sand effective October 1, 1957, recorded as Original Act No. 291031; on Southeast by lands of Adolph Petitjean; on the Southwest by lands of Adolph Petitjean and on the Northwest by lands of Adolph Petitjean.

Leases with ownership:

Continental Oil Company 100%.

B-1. Continental Lease No. 68812, dated May 1, 1953, between Edward Arceneaux, as Lessor, and Verne Hawkins, as Lessee, recorded in Book S-12, Page 147, under Entry

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No. 261008, covering the following described land, in Acadia Parish, Louisiana, to-wit:

Tract 1: A certain tract of land situated in the W/2 of Section 12, T-9-S, R-2-E, bounded by lands owned now or formerly as follows, to-wit: North by Henry Arceneaux and Telesphore Gaspard; East by Sidney Broussard; South by Sidney Broussard and Curtis Johnson; West by Eugene Dupuis, Alton Arceneaux and Henry Arceneaux. Said tract of land containing 40.48 acres, more or less.

Tract 2: A certain tract of land situated in the W/2 of Section 12, T-9-S, R-2-E, bounded by lands owned now or formerly as follows, to-wit: North by

Telesmare Blanchard and Joel W. Goldsby, et al, East by Joel W. Goldsby, et al, South and West by Sidney Broussard. Said tract containing 57.32 acres, more or less.

B-2. Continental Lease No. 68813, dated February 25, 1958, but effective May 1, 1958, between Lawrence Revette, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 293529, Book ....., Page ....., insofar, but only insofar as said lease covers the following described land in Acadia Parish, Louisiana, to-wit:

The North 17 acres of a 37 acre tract which is located in the SW¼ of Section 7, Township 9 South, Range 3 East, the south line of said 17 acre tract being parellel to the south line of Section 7 and sufficient distance south of the north lines of the tract to contain 17 acres, more or less, said 17 acres, being bounded by lands now or formerly as follows: North by Alicia R. Blanchard and Aristille Cormier; East by lands of Marciel Roach; South by other lands of Lawrence Revette; and West by lands of Eddie Prejean and Alicia R. Blanchard.

B-3. Continental Lease No. 68814, dated May 1, 1953, between Edgar Quebodeaux, as Lessor, and Verne Hawkins, as Lessee, recorded under Entry No. 261010, Book S-12, Page 153, as amended by an instrument dated March 26, 1958, recorded under Entry No. 294242, covering the following described lands, in Acadia Parish, Louisiana, to-wit:

40 acres, more or less, situated in the Southwest Quarter of Section 7, Township 9 South, Range 3 East, bounded by lands now or formerly as follows, to-wit: North by Leonce Breaux; East by Mrs. Telesmore Blanchard; South by Eddie Prejean; and West by J. W. Goldsby, et al.

B-4. Continental Lease No. 68815, dated May 1, 1953, between Sidney Broussard, as Lessor, and Verne Hawkins, as Lessee, recorded under Entry No. 261011, Book S-12, Page 156, covering the following described lands, in Acadia Parish, Louisiana, to-wit:

1. 11.66 acres, more or less, situated in the West Half of Section 12, Township 9 South, Range 2 East, bounded by lands owned now or formerly as follows, North by Telesphor Gaspard, East and West by Edward Arceneaux, South by other lands of lessor.
2. 118 acres, more or less, situated partly in West Half of Section 12 and partly in North Half of Section 13, all in Township 9 South, Range 2 East, bounded by lands owned now or formerly as follows, North by Edward Arceneaux, other lands of lessor, and J. W. Goldsby, East by J. W. Goldsby, et al, Louis Cormier and Emile Petitjean; South by Louis Cormier, Emile Petitjean and Curtis Johnson; West by Curtis Johnson and Edward Arceneaux, Less and Except the following de-

scribed lands which are excluded from Tract 2, being as follows: 25.98 acres, more or less, situated in Section 13, Township 9 South, Range 2 East, being further described as bounded, now or formerly as follows: North by other lands of lessor and/or Southeast line of Edward Arceneaux Unit No. 2 for the Klumpp Sand as established by Order No. 307-D of the Conservation Department effective October 1, 1957, recorded under Entry No. 291031, and Mary Easley G. McConnell, et al; East by Louis Cormier and Ashton Petitjean; South by Ashton Petitjean and Curtis Johnson; West by other lands of lessor and/or above described unit line.

B-5. Continental Lease No. 68816, dated March 4, 1958, but effective May 1, 1958, between Alicia Roach Blanchard, et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 293732, Book ....., Page ....., covering and affecting the following deseribed lands, in Acadia Parish, Louisiana, to-wit:

> 28.5 acres, more or less, situated in the South Half of Section 7, Township 9 South, Range 3 East, bounded by lands owned now or formerly as follows: North by Leonce Breaux, East by Aristille Cormier, South by Laurence Revet and West by Edgar Quebodeaux and Eddie Prejean.

B-6. Continental Lease No. 68818, dated May 1, 1953, between Leonce Breaux, et ux, as Lessor, and Verne Hawkins, as Lessee, recorded under Entry No. 261013, Book S-12, Page 162, insofar but only insofar as said lease covers the following described lands, in Acadia Parish, Louisiana, to-wit:

> 3.06 acres, more or less, located in the Northwest corner of the South Half of the Northwest quarter (being the Northwest part of the Leonce Breaux tract) in Section 7, Township 9 South, Range 3 East, and further described as being 371.5' long on the West side, 363.4 feet long on the North side, 363.7 feet long for the east side, and 362.1 feet long for the south side.

B-7. Continental Lease No. 68852, dated April 29, 1953, between Agnes Richard Tanner, et al, as Lessor, and Cecil Hawkins, as Lessee, recorded in Book X-12, Page 358, under Entry No. 262503, and

Lease dated May 27, 1953, between Mary Easley G. McConnell, et al, as Lessor, and Cecil Hawkins, as Lessee, recorded under Entry 261006, Book S-12, Page 140, said

leases covering the following described land, in Acadia Parish, Louisiana, to-wit:

The East half of Section 12, Township 9 South, Range 2 East, containing 322 acres, more or less.

B-8. Continental Lease No. 70880, dated October 15, 1953, between Mrs. Hazel Larcode Prejean, et al, as Lessor, and Verne Hawkins, as Lessee, recorded under Entry No. 261707, Book U-12, Page 490, insofar, but only insofar as said lease covers the following described lands, in Acadia Parish, Louisiana to-wit:

56.27 acres, more or less, being the western part of a 116.46 acre tract which is situated in Section 6, Township 9 South, Range 3 East, said 56.27 acres being that part of the above lease which is located in Nodosaria Unit No. 11, said tract being bounded by lands now or formerly as follows: North by Ray E. Babineaux and

Arthur Cormier; East by the east line of Nodosaria Unit No. 11 established by the Conservation Department of State of Louisiana by Order No. 307-b dated October 2, 1956; South by lands of Chas. P. Willis, et al; West by lands of Laura C. Doucet, Elton Douget and by Ray E. Babineaux.

B-9. Continental Lease No. 70881, dated October 15, 1953, between Eddie Prejean, as Lessor, and Verne Hawkins, as Lessee, recorded under Entry No. 261708, Book U-12, Page 494, insofar, but only insofar as said lease covers the following described lands, in Acadia Parish, Louisiana, to-wit:

1. 42.45 acres, more or less, described as the Southwest Quarter of Southwest Quarter of Section 7,

Township 9 South, Range 3 East, bounded by lands now or formerly as follows: North by Edgar Quebodeaux; East by Telesmare Blanchard, et al; South by other lands of lessor; West by Joel W. Goldsby, et al.

2. 15.70 acres, more or less, out of a 62.94 acre tract of land located in the Northwest Quarter of Section 18, Township 9 South, Range 3 East, said 15.70 acres being the northwest part thereof and being bounded as follows: North by Tract 1 above described; East by a southerly projection of the east line of the Eddie Prejean lands in Section 7 being Tract 1 above described, or other lands of lessor; South by a projected line which is an east extension of the south line of the Louis Cormier 41 acre tract located in the NE¼ of the NE¼ of Section 13, Township 9 South, Range 2 East, or other land of lessor; West by lands of Aristille Cormier.

B-10. Continental Lease No. 70882, dated October 10, 1953, between Alfred Latiolais, as Lessor, and Cecil Hawkins, as lessee, recorded in Book U-12, Page 498, under Entry No. 261709, covering the following described land, in Acadia Parish, Louisiana, to-wit:

12 acres, more or less, situated in the Southwest Quarter of Section 6, Township 9 South, Range 3 East, bounded by lands owned now or formerly as follows, to-wit: North by Ozema Mire Credeur; East by Dernal Veronie; South by Eve Cormier; West by Houston Blanchard.

B-11. Continental Lease No. 70883, dated October 12, 1953, between Onezia M. Credeur, Lessor, and Cecil Hawkins, Lessee, recorded under Entry No. 261710, Book U-12, Page 501, as amended by an instrument dated September 18, 1956, between Onezia Mire and Continental Oil Com-

pany, recorded under Entry No. 283813, Book W-15, Page 161, covering the following described land, in Acadia Parish, Louisiana, to-wit:

21.6 acres, more or less, situated in the southwest Quarter of Section 6, Township 9 South, Range 3 East, bounded now or formerly as follows, to-wit:

North by Elise Cormier Rourke and Laura Cormier Doucet; East by Romelus Melancon Estate, Leonard Comeaux, Una Mire Comeaux and Benel Veronie; South by Alfred Latiolais; and West by Elixe Cormier, wife of Martin Rourke and Houston Blanchard or Public Road.

B-12. Continental Lease No. 70886, dated October 13, 1953, between Wallace Hebert, et ux, as Lessor, and Cecil Hawkins, as Lessee, recorded under Entry No. 261701, Book U-12, Page 467, insofar, but only insofar as said lease covers the following described lands, in Acadia Parish, Louisiana, to-wit:

The western 11.45 acres, more or less, out of a 36 acre tract which is situated in the Northeast Quarter of Section 6, Township 9 South, Range 3 East, being that part of the lease which is located in Nodosaria Unit No. 11, the 11.45 acres being bounded as follows: North by Drozin Broussard; East by the east line of Nodosaria Unit No. 11 which was established by the Conservation Department of State of Louisiana by Order No. 307-b dated October 2, 1956; South by lands of Arthur Cormier; West by lands of Anna P. Hebert.

B-13. Continental Lease No. 70889, dated October 15, 1953, between Ray E. Babineaux, as lessor, and Cecil Hawkins, as Lessee, recorded in Book U-12, Page 474,

under Entry No. 261703, insofar but only insofar as said lease covers the following described land, to-wit:

A certain tract of land situated in Section Six, Township Nine South, Range Three East (Sec. 6, T-9-S, R-3-E), Acadia Parish, Louisiana, containing Thirty and 92/100 (30.92) acres, more or less, bounded now or formerly, North by Aurelian Hebert, South by Isidore Prejean, and Arthur Cormier, East by Arthur Cormier and West by Joseph Cormier, Jr., and Estate of Isidore Prejean.

B-14. Continental Lease No. 70890, dated October 15, 1953, between Houston Mire, et al, as Lessor, and Cecil Hawkins, as Lessee, recorded under Entry No. 261686, Book U-12, Page 406, as ratified by a ratification instrument dated July 2, 1956, by Leonard Comeaux, recorded under Entry No. 282023, and

Lease dated October 15, 1953, between Rita Mire, as Lessor, and Cecil Hawkins, as Lessee, recorded under Entry No. 261696, Book U-12, Page 447, and

Lease dated October 15, 1953, between Joseph L. Mire, as Lessor, and Cecil Hawkins, as Lessee, recorded under Entry No. 261698, Book U-12, Page 455, and

Lease dated October 15, 1953, between Walter Veronie, as Lessor, and Cecil Hawkins, as Lessee, recorded under Entry No. 261697, Book U-12, Page 451, insofar, but only insofar as said leases cover and affect the following described lands, in Acadia Parish, Louisiana, to-wit:

61.55 acres, more or less, being the Southwest part of the original 151.8 acres, covered by said leases, which is located in the South Half of Section 6, Township 9 South, Range 3 East, being that part of the lease which is located in Nodosaria Unit No. 11, said 61.55 acres, being bounded as follows: North by lands of Mrs. Hazel Prejean; East by the east line of Nodo-

saria Unit No. 11, as established by the Conservation Department of State of Louisiana by Order No. 307-b, dated October 2, 1956; South by Section line and/or lands of Luma Cormier, Walter Cormier and Eva Cormier; and West by lands of Alfred Latiolais and Onezia M. Credeur.

B-15. Continental Lease No. 70892, dated October 17, 1953, between Anna P. Hebert, et al, as Lessor, and Cecil Hawkins, as Lessee, recorded in Book U-12, Page 418, under Entry No. 261689, covering the following described land, in Acadia Parish, Louisiana, to-wit:

40 acres, more or less, situated in north half of Section 6, Township 9 South, Range 3 East, bounded by lands owned now or formerly as follows, to-wit: North by John

Guilbeaux and Fiet Cormier; East by Wallace Hebert; South by Arthur Cormier and Ray Babineaux; West by Howard Lantier.

B-16. Continental Lease No. 70893, dated October 19, 1953, between Marcelus Savoie, as Lessor, and Cecil Hawkins, as Lessee, recorded in Book U-12, Page 423, under Entry No. 261690, covering the following described land, in Acadia Parish, Louisiana, to-wit:

30.5 acres, more or less, situated in the Northeast Quarter of Section 1, Township 9 South, Range 2 East, bounded by lands owned now or formerly as follows, to-wit: North by Simonne Gilbert and Moise Touchet; East by August Martinez; South by Andrew Menard; West by Andrew Menard and Noah Stelly.

B-17. Continental Lease No. 70894, dated October 19, 1953, between August Martinez, as Lessor, and Cecil Hawkins, as Lessee, recorded in Book U-12, Page 427, under

Entry No. 261691, covering the following described land, in Acadia Parish, Louisiana, to-wit:

35 acres, more or less, situated in the Northeast Quarter of Section 1, Township 9 South, Range 2 East, and in the Northwest Quarter of Section 6, Township 9 South, Range 3 East, bounded by lands owned now or formerly as follows, to-wit:

North by Moise Touchet; East by Howard Lantier; South by Andrew Menard; West by Marcelus Savoie.

B-18. Continental Lease No. 70896, dated October 21, 1953, between Howard Lantier, as Lessor, and H. A. Sackman, as Lessee, recorded in Book U-12, Page 435, under Entry No. 261693, covering the following described land in Acadia Parish, Louisiana, to-wit:

30 acres, more or less, situated in the Northwest Quarter of Section 6, Township 9 South, Range 3 East, bounded by lands owned now or formerly as follows, to-wit: North by Moise Touchet and John Guilbeaux; East by Aurellian Hebert Estate; South by Elton Douget; West by August Martinez.

B-19. Continental Lease No. 70897, dated October 24, 1953, between Elton Douget, as Lessor, and H. A. Sackman, as Lessee, recorded in Book V-12, Page 439, under Entry No. 261694, covering the following described land in Acadia Parish, Louisiana, to-wit:

32 acres, more or less, situated in the Northwest Quarter of Section 6, Township 9 South, Range 3 East, bounded by lands owned now or formerly as follows, to-wit: North by Howard Lantier; East by Ray Babineaux and Estate of Isadore Prejean; South by Laura Cormier; West by Aurelian Hebert and Andrew Menard.

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B-20. Continental Lease No. 71017, dated December 31, 1953, between Nelson Stelly, as Lessor, and Cecil Hawkins, as Lessee, recorded in Book B-13, Page 340, under Entry No. 263480, covering the following described land in Acadia Parish, Louisiana, to-wit:

28.75 acres, more or less, situated in Northern portion of Section 1, Township 9 South, Range 2 East, bounded by lands owned now or formerly as follows, to-wit: North by Mrs. Lorena C. Prejean Estate and Mrs. Louis Castille; East by Marcelus Savoie and Andrew Menard; South by Andrew Menard and Armogene Meche; West by Armogene Meche and Doris Melancon.

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B-21. Continental Lease No. 76648, dated March 7, 1955, between Rosa Breaux Broussard, et al, as Lessor, and Continental Oil Company, as Lessee, recorded in Book F-14, Page 535, under Entry No. 271797, covering the following described land in Acadia Parish, Louisiana, to-wit:

1. That certain strip of land thirty (30) feet in width heretofore constituting a private roadway along the North line and along the Northernmost two hundred (200) feet of the West line of that certain tract of one hundred (100) arpents, more or less, now or formerly bounded on the West by land of Curtis Johnson, on the North by lands of the widow and heirs of Ben Arceneaux and Sidney Broussard, on the East by land of Albert Lavergne, and on the South by lands of Zepherin Breaux. Said strip of land being more particularly described in act of partition between the widow and heirs of Simeon Broussard, Deceased, dated July 1, 1936, recorded in Acadia Parish, Louisiana, as Original Act No. 127817, in Conveyance Book O-5, page 466, and

being shown on plat attached to said act of partition. Said Land is situated in Section 12, Township 9 South, Range 2 East.

2. That certain strip of land thirty (30) feet in width by three and one-half (3½) arpents in length constituting a private roadway along the South line of lands owned now or formerly, by Edward Arceneaux, said strip of land being situated in Section 12, Township 9 South, Range 2 East, and bounded, now or formerly as follows: North by Edward Arceneaux; East by Tract 1 hereinabove described; South by Curtis Johnson or assigns; and West by Public Road and/or Eugène Dupuis and Alfred Webber, being the same property acquired by Simeon Broussard from Mrs. Ben Arceneaux et al by deed dated September 27, 1922, and recorded in Acadia Parish, Louisiana, as Original Act No. 62781, in Conveyance Book T-3, page 442.

B-22. Continental Lease No. 76855, dated May 11, 1955, between Venola Mire Gaudet, et al, as Lessor, and Continental Oil Company, as Lessee, recorded in Book ....., Page ....., under Entry 273709, of the Conveyance Records of Acadia Parish, Louisiana; and

Lease dated July 18, 1955, between Maurice Mire, et al, as Lessor, and Continental Oil Company, as Lessee, recorded in Book P-14, Folio 567, under Entry No. 274675, insofar but only insofar as said leases cover the following described land, in Acadia Parish, Louisiana, to-wit:

1. That certain strip of land thirty (30) feet in width heretofore constituting a private roadway along the North line and along the Northernmost two hundred (200) feet of the West line of that certain tract of one hundred (100) arpents, more or less, now or formerly bounded on the West by land of

Curtis Johnson, on the North by lands of the widow and heirs of Ben Arceneaux and Sidney Broussard, on the East by land of Albert Lavergne, and on the South by lands of Zepherin Breaux. Said strip of land being more particularly described in act of partition between the widow and heirs of Simeon Broussard, Deceased, dated July 1, 1936, recorded in Acadia Parish, Louisiana, as Original Act No. 127817, in Conveyance Book O-5, page 466, and being shown on plat attached to said act of partition. Said land is situated in Section 12, Township 9 South, Range 2 East.

2. That certain strip of land thirty (30) feet in width by three and one-half (3½) arpents in length constituting a private roadway along the South line of lands owned

now or formerly, by Edward Arceneaux, said strip of land being situated in Section 12, Township 9 South, Range 2 East, and bounded, now or formerly as follows: North by Edward Arceneaux; East by Tract 1 hereinabove described; South by Curtis Johnson or assigns; and West by Public Road and/or Eugene Dupuis and Alfred Webber, being the same property acquired by Simeon Broussard from Mrs. Ben Arceneaux et al by deed dated September 27, 1922, and recorded in Acadia Parish, Louisiana, as Original Act No. 62781, in Conveyance Book T-3, page 442.

B-23. Continental Lease No. 80037, dated March 13, 1956, between Leah Broussard Murphy, as Lessor, and Louis E. Bernard, as Lessee, recorded in Book ....., Page ....., under Entry No. 280318, of the Conveyance Records of Acadia Parish, Louisiana, insofar, but only insofar as

said lease covers the following described land, in Acadia Parish, Louisiana, to-wit:

1. A certain tract of land containing 85 acres, more or less, lying in Sections 12 and 13, Township 9 South, Range 2 East, bounded by lands owned now or formerly, as follows: North by Louis Benjamin Arceneaux (now Edward Arceneaux and Sidney Broussard); East by Albert Lavergne (now Sidney Broussard); South by Zepherine Breaux (now Curtis Johnston); and West by Curtis Johnson and Louis Benjamin Arceneaux (now Edward Arceneaux).

2. That certain strip of land thirty (30) feet in width by three and one-half (3½) arpents in length constituting a private roadway along the South line of lands owned now or formerly, by Edward Arceneaux, said strip of land being situated in Section 12, Township 9 South, Range 2 East, and bounded, now or formerly, as follows: North by Edward Arceneaux; East by Tract 1 hereinabove described; South by Curtis Johnson or assigns and West by Public Road and/or Eugene Dupuis and Alfred Webber; being the same property acquired by Simeon Broussard from Mrs. Ben Arceneaux et al by deed dated September 27, 1922, and recorded in Acadia Parish, Louisiana, as Original Act No. 62781, in Conveyance Book T-3, Page 442.

B-24. Continental Lease No. 80040, dated April 5, 1956, by and between Sidney Broussard, as Lessor and Continental Oil Company, as Lessee, recorded in Book ....., Folio ....., under Entry No. 280245, covering the following described land, in Acadia Parish, Louisiana, to-wit:

That certain strip of land thirty (30) feet in width by three and one-half (3½) arpents in length con-

stituting a private roadway along the South line of lands owned now or formerly by Edward Arceneaux, said strip of land being situated in Section 12, Township 9 South, Range 2 East, and bounded, now or formerly, as follows: North by Edward Arceneaux; East by Sidney S. Broussard; South by Curtis Johnson or assigns; and West by Public Road and/or Eugene Dupuis and Alfred Webber, being the same property acquired by Simeon Broussard from Mrs. Ben Arceneaux et al by deed dated September 27, 1922, and recorded in Acadia Parish, Louisiana, as Original Act No. 62781, in Conveyance Book T-3, page 442.

B-25. Continental Lease No. 80128, dated December 1, 1956, between Leonard Comeaux, as Lessor, and Continental Oil Company, as Lessee, recorded in Book .....; Page ....., under Entry No. 285213, insofar but only insofar as said lease covers the following described land, in Acadia Parish, Louisiana, to-wit:

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4.58 acres, more or less, being the western part of the 10 acres covered by the lease which is situated in Section 6, Township 9 South, Range 3 East, being that part of the lease that is located in Nodosaria Unit No. 11, said 4.58 acres being bounded as follows: North by lands of Chas. P. Willis, et al; East by the east line of Nodosaria Unit No. 11 as established by the Conservation Department of State of Loiusiana by Order No. 307-b dated October 2, 1956; South by lands Houston Mire, et al; and West by lands of Onezia M. Credeur.

B-26. Continental Lease No. 80129, dated November 30, 1956, between Charles Prescott Wills, et al, as Lessor, and Continental Oil Company, as Lessee, recorded in Book ....., Page ....., under Entry No. 285214, insofar

but only insofar as said lease covers the following described land, in Acadia Parish, Louisiana, to-wit:

9.24 acres, more or less, being in the western part of the 40.6 acres covered by the lease which lands are situated in Section 6, Township 9 South, Range 3 East, being that part of the lease that is located in Nodosaria Unit No. 11, said 9.24 acres being bounded as follows: North by lands of Laura Cormier Doucet and by Mrs. Hazel L. Prejean, et al; East by the east line of Nodosaria Unit No. 11 as established by the Conservation Department of State of Louisiana by Order No. 307-b dated October 2, 1956; South by lands of Leonard Comeaux; and West by lands of Onezia M. Credeur.

B-27. Continental Lease No. 83297, dated August 13, 1957, between Police Jury of Acadia Parish, Louisiana, as Lessor, and Continental Oil Company, as Lessee, recorded in Book V-16, Folio 681, under Entry No. 290750, insofar but only insofar as said lease covers the following described land, in Acadia Parish, Louisiana, to-wit:

.72 of an acre being part of a road on the north side of Section 6 and 1.45 acres being part of a road along the south side of Section 6 (being .08 acre in Nodosaria Unit No. 8; .17 of an acre in Nodosaria Unit No. 4 and 1.92 acres in Nodosaria Unit No. 11, all established by Order No. 307-b dated October 2, 1956) said 2.17 acres being part of the western portion of the 5.66 acres covered by the lease which lands in said lease are situated in Section 31, Township 8 South, Range 3 East and in Sections 6 and 7, Township 9 South, Range 3 East, the 2.17 acres being located in Nodosaria Unit No. 4, Nodosaria Unit No. 8 and in Nodosaria Unit No. 11 all of which were established by the Conservation Department of State of

Louisiana by Order No. 307-b dated October 2, 1956, to which reference is made for acreage in this lease located within such units.

B-28. Continental Lease No. 83310, dated February 25, 1958, but effective May 1, 1958, between Aristille Cormier, et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 293528, Book ....., Page ....., insofar, but only insofar as said lease covers the following described lands, in Acadia Parish, Louisiana, to-wit:

The west 19 acres, more or less, of the 37 acre tract covered by said lease located in the South Half of Section 7, Township 9 South, Range 3 East, said 19 acres being bounded as follows: North by lands of Leonce Arceneaux, et ux; East by a line which is a northerly projection of the most easterly line of the Lawrence Revette lands which are located in the Southwest Quarter of Section 7 being South of and adjacent to this tract; South by lands of Lawrence Revette; West by lands of Alicia R. Blanchard.

B-29. Continental Lease No. 8331, dated February 27, 1958, but effective May 1, 1958,

between Sidney Broussard, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 293527, Book ....., Page ....., covering the following described lands, to-wit:

25.98 acres, more or less, situated in Section 13, Township 9 South, Range 2 East, Acadia Parish, Louisiana, and being further described as bounded now or formerly, as follows: North by other lands of lessor and/or southeast line of Edward Arceneaux Unit No. 2 for the Klumpp Sand as established by Order No. 307-D of the Conservation Department, ef-

fective October 1, 1957, recorded in COB X-16, at folio 48, under Entry No. 291031 of the official conveyance records of Acadia Parish, Louisiana, and Mary Easley G. McConnell, et al; East by Louis Cormier and Ashton Petitjean, et al; South by Aston Petitjean, et al and Curtis Johnson; West by other lands of lessor and/or above described unit line.

B-30. Continental Lease No. 83312, dated February 26, 1958, but effective May 1, 1958, between Leonce Breaux, et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 293530, Book ....., Page ....., insofar, but only insofar as said lease covers the following described lands, in Acadia Parish, Louisiana, to-wit:

The west 61.50 acres, more or less, of Tract 1 of the lease which tract contains 99 acres located in the North Half of Section 7, Township 9 South, Range 3 East, said 61.50 acres being bounded by lands now or formerly as follows: North by a 3.06 acre tract owned by lessor and by land of Eve Cormier and by Walter Cormier; East by a line which is a northerly projection of the east line of a tract containing 28.5 acres owned by Alicia R. Blanchard, et al which is located in the Northeast Quarter of the Southwest Quarter of Section 7; South by lands of Alicia R. Blanchard, et al and by Edgar Quebodeaux; West by west line of Section 7 and/or lands of Mary Easley McConnell, et al and by the 3.06 acre tract owned by lessor, it being the intention that the east 37.50 acres of the 99 acre tract is excluded from the above description.

B-31. Continental Lease No. 83335, dated May 7, 1958, between Aristille Cormier, et al, as Lessor, and Continental Oil Company, as Lessee, recorded under Entry No. 295077, Book ....., Page ....., insofar, but only insofar

as said lease covers the following described lands, in Acadia Parish, Louisiana, to-wit:

The north 13.75 acres, more or less, of the 20 acres covered by this lease which lands are situated in the Northeast part of Section 13, Township 9 South, Range 2 East and in Northwest part of Section 18, Township 9 South, Range 3 East, said 13.75 acres being bounded as follows: North by lands of Mary Easley McConnell, et al and by Eddie Prejean; East by lands of Eddie Prejean; South by a line which is an easterly projection of the south line of the Louis Cromier 41 acre tract located in the Northeast Quarter of the Northeast Quarter of Section 13; West by lands of Louis Cormier.

B-32. Continental Lease No. 88868, dated November 7, 1958, effective February 13, 1959, between Leonce Breaux, Lessor, and Continental Oil Company, Lessee, recorded under File No. 299828, Book ....., Page ....,covering and affecting lands described as follows, to-wit:

Tract 1. 1.86 acres, more or less, located in Section 11, Township 9 South, Range 2 East, bounded now or formerly as follows: North and East by the South line of the Elton Arceneaux Unit No. 1 established for the Klumpp "D" Sand, Rayne Field, by the Conservation Department Order No. 307-D-1, effective October 1, 1958, and re-

corded as Original Act No. 298174 of the Conveyance Records of Acadia Parish, Louisiana, West by lands of Gerard Mouton; Southby lands of John Bearb.

Tract 2. 1.42 acres, more or less, located in Section 43, Township 9 South, Range 2 East, bounded now or formerly as follows: Northwest by lands of Jean

Benoit, Southwest by lands of Robert Castille, Northeast and Southeast by the West line of Nodosaria Unit No. 7, established for the Nodosaria Sand in Rayne Field by the Conservation Department Order No. 307-b, effective October 1, 1956, and recorded as Original Act No. 284288 of the Conveyance Records of Acadia Parish, Louisiana.

Leases with ownership:

Continental Oil Company 50% and Sun Oil Company 50%.

C-1. Continental Lease No. 76647, dated February 7, 1955, between Lize Mire, Lessor, and Continental Oil Company, Lessee, recorded under File No. 271114, in Book ....., Page .....; and

Lease dated February 9, 1955, between Euclide Brasseaux, Lessor, and Continental Oil Company, Lessee recorded under File No. 271113, in Book ....., Page .....; and

Lease dated July 19, 1955, between Aurelien Credeur, et al, Lessor, and Sun Oil Company, Lessee, recorded under File No. 276579, Book W-14, Page 34; and

Lease dated September 7, 1955, between Wilton Credeur, Lessor, and Sun Oil Company, Lessee, recorded under File No. 276800, Book W-14, Page 549; and

Lease dated September 7, 1955, between Delvin Credeur, Lessor, and Sun Oil Company, Lessee, recorded under File No. 277958, Book A-15, Page 391; and

Lease dated January 27, 1956, between Henrietta Delores Fall, et al, as Lessor, and Sun Oil Company, Lessee, recorded under File No. 278763, Book D-15, Page 585, the above leases cover the following described lands, in Acadia Parish, Louisiana, to-wit:

A certain tract or parcel of land containing three (3) arpents, more or less, situated in Section 43 and/or 44, Township 9 South, Range 2 East, bounded now or formerly on the North by Basil Sonnier and South,

East and West by Bayou Wikoff; Being the same property acquired by Lize Mire by Act No. 46511 of the records of Acadia Parish, Louisiana.

C-2. Continental Lease No. 76688, dated February 7, 1955, between Antonia Castille, Lessor, and Sun Oil Company, Lessee, recorded under File No. 271410, Book E-14, Page 248; and

Lease dated February 8, 1955, between John Castille, et al, Lessors, and Sun Oil Company, Lessee, recorded under File No. 272852, Book J-14, Page 400; and

Lease dated July 28, 1955, between Edgar Domingue, et al, Lessors, and Sun Oil Company, Lessee, recorded under File No. 275102, Book R-14, Page 67; and

Lease dated July 11, 1956, between Homer Andrew Arceneaux, a minor, represented therein by J. Warren Arceneaux, Tutor, Lessor, and Sun Oil Company, Lessee, recorded under 283575, Book V-15, Page 259, the above leases cover the following described lands, in Acadia Parish, Louisiana, to-wit:

A certain tract of land situated in Section 43, Township 9 South, Range 2 East, containing 1.2 acres, more or less, and bounded now or formerly as follows:

On the Northeast by Leonce Breaux and Bayou Wikoff, Southeast by Bayou Wikoff, Southwest by Waddy Arceneaux and Northwest by Rosalie Credeur

Benoit, et al. Being the same property acquired by Robert Castille from Felicien Arceneaux on June 8, 1929 by deed recorded under Entry No. 92039 in Conveyance Book L-4, Page 161, records of Acadia Parish, Louisiana.

C-3. Continental Lease No. 76700, dated March 29, 1955, between Joseph Adonis Credeur, et al, as Lessors, and

Continental Oil Company, as Lessee, recorded under File No. 272613, Book ....., Page ....., covering the following described lands, in Acadia Parish, Louisiana, to-wit:

A certain tract of land containing 4 acres, more or less, lying in Section 43, Township 9 South, Range 2 East, bounded, now or formerly, as follows: North by Julienne LeBlanc and Waddy Arceneaux; East by Waddy Arceneaux and Bayou Wikoff; South by Bayou Wikoff and Leonce Breaux; and West by Leonce Breaux and Julienne LeBlanc.

C-4. Continental Lease No. 76701, dated March 29, 1955, between Dupre Credeur, et al, as Lessors, and Continental Oil Company, as Lessee, recorded under File No. 272612, Book ....., Page .....; and,

Lease dated March 29, 1955, between Joseph Credeur, et al, as Lessors, and Continental Oil Company and Sun Oil Company, as Lessees, recorded under File No. 293273, Book ....., Page .....; and,

Lease dated March 29, 1955, between Raymond Lester Cormier, Lessor, and Continental Oil Company and Sun Oil Company, as Lessees, recorded under File No. 293271, Book ....., Page .....; and

Lease dated March 29, 1955, between Marie Celine Cormier Brace, as Lessor, and Continental Oil Company and Sun Oil Company, as Lessees, recorded under File No. 293272, Book ....., Page .....; and,

Lease dated March 29, 1955, between Elwood Credeur, et al, as Lessor, and Continental Oil Company and Sun Oil Company, as Lessees, recorded under File No. 293274, Book ....., Page .....; and,

Lease dated March 29, 1955, between Mabel Credeur Hebert, as Lessor, and Continental Oil Company and Sun Oil Company, as Lessees, recorded under File No. 293603, Book ....., Page ....., whereby the above leases cover the following described lands, to-wit:

(A2674)

A certain tract of land containing 1 acre, more or less, lying in Section 43, Township 9 South, Range 2 East, in Acadia Parish, Louisiana, bounded, now or formerly, as follows:

North by Jean Benoit, Basil Sonnier and Waddy Arceneaux; East by Waddy Arceneaux and W. Petitjean and Company, et al; South by W. Petitjean and Company, et al and Leonce Breaux; and West by Leonce Breaux, Jean Benoit, and Basil Sonnier.

Operating and Net Profits Agreements

D-1. Continental Contract No. 9760—Operating and Net Profits Agreement dated November 7, 1957, between Joseph M. Petitjean, et al, and Continental Oil Company, the original being filed of record under Entry No. 296755, in Conveyance Book Q-17, Page 746, of records of Acadia Parish, Louisiana, as to the Nodosaria Sand Unit No. 7 originally formed and as Revised by Order No. 307-b, and as to the Homeseekers "E" Sand Unit No. 4 established by Order No. 307-A, said property so included in the units being described as follows, to-wit:

A2675

That certain lot of ground known as the "Cemetery Tract" situated in Section 47, Township 9 South, Range 2 East, comprising 1.13 acres, which is described as: commencing at a 1¼" iron post situated at the southwest corner of Lot 8 of Block "C" of Partition between the Heirs of Jean Mouton, dated July 9, 1923, recorded in Acadia Parish, Louisiana in Conveyance Book Q-3 at page 774, as Original Act No. 66624; then South 44° 24' West 231.7 feet; thence North 39° 17' West 210.2 feet; thence North 39° 59' East 222.7 feet to the west line of said Lot 8 of Block

"C" of the Mouton Partition; thence South 42° 11' East with the west line of said Lot 8 of Block "C" to the point of beginning; being the identical tract of land reserved and excepted by Telesphore Gaspard in conveyance by him to Volcar Arsement, recorded in Conveyance Book M-2, page 716; said cemetery tract being bounded on the east by the West line of Lot 8 of Block "C" of the Mouton Partition owned by Claby Dugas, and on th eSouth, West and North by lands of W. Petitjean & Company.

D-2. Continental Contract No. 9761—Operating and Net Profits Agreement dated December 26, 1957, between W. Petitjean and Company and Continental Oil Company, the original being filed of record under Entry No. 296754, in Conveyance Book Q-17, Page 736, of the records of Acadia Parish, Louisiana, as to Nodosaria Unit No. 7 originally formed and as Revised by Order No. 307-b, said property so included in the unit being described as follows, to-wit:

A certain tract of land containing four (4) acres, more or less, lying in Section 43, Township 9 South, Range 2 East, bounded now or formerly as follows: North by Julienne LeBlanc and Waddy Arceneaux; East by Waddy Arceneaux and Bayou Wikoff; South by Bayou Wikoff and Leonce Breaux; and West by Leonce Breaux and Julian LeBlanc.

D-3. Continental Contract No. 9793—Operating and Net Profits Agreement dated May 13, 1958, between Mrs. Agnes Richard Tanner and Continental Oil Company, the original being filed of record under Entry No. 296583, in Conveyance Book ....., Page ....., of records of Acadia Parish, Louisiana, as to the Nodosaria Sand Unit No. 4 originally formed and as Revised by Order No. 307-b, and as to the Homeseekers "E" Sand Unit No. 3 established by Order

A2675)

No. 307-A, said property so included in the units being described as follows, to-wit:

1.07 acres of land, more or less, out of Section No. 12, Township 9 South, Range 2 East in Acadia Parish, Louisiana, and being described as follows:

BEGINNING at a point in the north line of Edward Arceneaux's 61.01 acre tract for the most southerly southeast corner of Alicia Roach Blanchard's 67.56 acre tract;

THENCE North 1 deg. 18 min. East 228.7 feet with the most westerly east line of the said Blanchard 67.56 acre tract to a point for its most southerly interior corner;

THENCE South 88 deg. 56 min. East 208.9 feet with the most northerly south line of the said Blanchard 67.56 acre tract to a point for its most northerly southeast corner in the west line of Mary Easley G. McConnell, et al, 309.10 acre tract;

THENCE South 1 deg. 12 min. West 219.2 feet with the west line of the said McConnell, et al, 309.10 acre tract to a point for the northeast corner of the said Arceneaux 61.01 acre tract;

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THENCE South 88 deg. 29 min. West 209.6 feet with the north line of the said Arceneaux 61.01 acre tract to the place of beginning, containing 1.07 acres of land, more or less. All bearings are based on Lambert Grid of the Louisiana State Plane Coordinate System.

Lease and Option Agreement (Surface Lease)

E-1. Continental Contract No. 8713—Lease and Option Agreement dated June 15, 1955, filed for record under

Entry No. 274550 in Conveyance Book ....., Page ....., of the Records of Acadia Parish, Louisiana, from Gerard Mouton, et al, as Lessor, to Continental Oil Company, as Lessee, as extended and amended by Extension and Amendment of Surface Lease dated January 15, 1959, filed for record under Entry No. ..... in Conveyance Book, ..., Page....., of the Records of Acadia Parish, Louisiana, covering the following described lands, to-wit:

(a) A 10 acre tract of land in Section 47, Township 9 South, Range 2 East, described as beginning at a point N 48 deg. 34' E a distance of 878 feet from most southerly corner of Section 47, Township 9 South, Range 2 East, thence N 48 deg. 34' E a distance of 853 feet, thence N 41 deg. 34' W a distance of 510.7 feet, thence S 48 deg. 34' W a distance of 853 feet, thence S 41 deg. 34' E a distance of 510.7 feet to point of beginning, being 10 acres, more or less.

(b) A 10 acre tract of land in Section 47, Township 9 South, Range 2 East, more particularly described as follows: For a point of beginning, commence at the most Southerly corner of Section 47, Township 9 South, Range 2 East; go thence N 48 deg. 34' E a distance of 878 feet; thence N 41 deg. 34' W a distance of 1021.3 feet to point of beginning. From this point, go hten South 41 deg. 34' E a distance of 510.6 feet; thence N 48 deg. 34' E a distance of 853 feet; thence N 41 deg. 34' W a distance of 510.6 feet; then S 48 deg. 34' W a distance of 853 feet the point of beginning, SAVE AND EXCEPT an approximatel one-half (½) acre tract of land in Section 48, Township 9 South, Range 2 East, Acadia Parish Louisiana, more particularly described as follows:

For point of beginning commence at the most Southerly corner of Section 47, Township 9 South,

Range 2 East, go thence N 48 deg. 34' East a distance of 878 feet; thence N 41 deg. 34' W a distance of 660.7 feet to point of beginning; from this point go thence South 41 deg. 34' E a distance of 150 feet; thence N 48 deg. 34' E a distance of 150 feet; thence N 41 deg. 34' W a distance of 150 feet; thence S 49 deg. 34' W a distance of 160 feet to point of beginning, said tract having been assigned by Continental Oil Company to Continental Pipe Line Company by instrument dated the ..... day of ....., 1959, filed for record under Entry No. ....., Conveyance Book ....., Page ..... of the Records of Acadia Parish, Louisiana.

E-2. Surface lease with option, dated September 27, 1954, from W. Petitjean and Company, as Lessor, and Continental Oil Company, as Lessee, the original being filed of record under entry No. 268915, in Conveyance Book ....., Page ....., of records of Acadia Parish, Louisiana, covering the following described lands, to-wit:

That certain tract or parcel of land lying and being situated in Sections 4 and 47, T-9-S, R-2-E, Acadia Parish, Louisiana, containing 2.67 acres of land, more or less, more particularly described as follows: Beginning at a point 23 feet N 41° 09' W 23 feet and S 48° 34' W 95 feet of the SW corner of Section 47, T-9-S, R-2-E; Thence

N 48° 34' E 472.0 feet to ¾" G.I. pipe set for corner; thence N 41° 26' W 248.0 feet to ¾" G.$. pipe set for corner; thence S 48° 06' W 472.5 feet to an old 1¼" pipe and ¾" G.I. pipe set for corner; thence S 41° 31' E 244.2 feet to the place of beginning and ¾" G.I. pipe set for corner. All as more fully shown by plat

of survey of Letz Engineers, Crowley, Louisiana, dated August 27, 1954, which is attached thereto and made part thereof.

Rights of Way Agreements (For Pipe Lines)

(The recording references hereinafter given are all in the Conveyance Records of Acadia Parish, Louisiana)

F-1. Rights of Way Agreement dated August 15, 1955, between W. Petitjean and Company, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276425, Book V-14, Page 422, crossing Grantor's lands in Sections 4 and 47, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-2. Rights of Way Agreement dated August 19, 1955, between Gerard Mouton et al, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276424, Book V-14, Page 417, crossing and on Grantor's lands, in Section 47 and 4, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-3. Rights of Way Agreement dated August 18, 1955, between J. Warren Arceneaux, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276427, Book V-14, Page 431, crossing Grantor's land in Section 47, Township 9 South, Range 2 East, and shown on plat of survey anexed to the agreement.

F-4. Rights of Way Agreement dated August 19, 1955, between Claby Dugas, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276426, Book V-14, Page 427, crossing Grantor's lands in Section 47, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-5. Rights of Way Agreement dated October 31, 1955, between Lennie Arceneaux, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 277050,

Book X-14, Page 439, crossing Grantor's lands in Section 3 and 47, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-6. Rights of Way Agrement dated August 18, 1955, between J. Weston Arceneaux et al, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276430, Book V-14, Page 443, crossing Grantor's lands in Sections 47 and 3, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-7. Rights of Way Agreement dated November 2, 1955, between Lennie Arceneaux et al, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 279583, Book ....., Page ....., crossing Grantor's lands in Sections 3, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-8. Rights of Way Agreement dated August 18, 1955, between J. Walter Arceneaux, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276429, Book V-14, Page 439, crossing Grantor's land in Sections 3 and 47, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-9. Rights of Way Agreement dated August 31, 1955, between Dumas Cormier, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276428, Book V-14, Page 435, on Grantor's lands in Section 3 and 46, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-10. Rights of Way Agreement, dated August 16, 1955, between Waddy Arceneaux, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276436, Book V-14, Page 463, crossing Grantor's lands in Section

11, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-11. Rights of Way Agreement dated September 1, 1955, between Eugene Dupuis et al, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276435, Book V-14, Page 459, crossing Grantor's lands in Section 11, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-12. Rights of Way Agreement dated August 12, 1955, between Elton A. Arceneaux as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276434, Book V-14, Page 456, crossing Gratnor's lands in Section 11, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-13. Rights of Way Agreement dated August 15, 1955, between Thelice Gaspard, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276431, Book V-14, Page 448, crossing and on Grantor's lands in Sections 1, 3 and 12, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-14. Rights of Way Agreement dated August 17, 1955, between Lucinda Blanchard Cormier, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276433, Book V-14, Page 454, on Grantor's 67.50 acre tract in Sections 1 and 12, Township 9 South, Range 2 East.

F-15. Rights of Way Agreement dated August 31, 1955, between J. Ovey Arceneaux, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276432, Book V-14, Page 452, crossing Grantor's 50 acre tract in Sections 1 and 12, Township 9 South, Range 2 East.

F-16. Rights of Way Agreement dated September 27, 1957, between W. Petitjean and Company, as Grantor,

and Continental Oil Company, as Grantee, recorded under Entry No. 291341, Book Y-16, Page 82, and crossing Grantor's lands in Sections 4 and 47, Township 9 South, Range 2 East.

F-17. Rights of Way Agreement dated September 30, 1957, between Gerard Mouton, et al, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 292273, Book A-17, Page 748, on and crossing Grantor's lands in Section 47, Township 9 South, Range 2 East.

F-18. Rights of Way Agreement dated June 15, 1956, between Edward Arceneaux, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 282-388, Book R-15, Page 498, on and crossing Grantor's 43.23 acre tract in Section 12, Township 9 South, Range 2 East.

F-19. Rights of Way Agreement dated June 15, 1956, between Odoriska D. Cormier, et al, as Grantor, and Continental Oil Company. as Grantee, recorded under Entry No. 282389, Book R-15, Page 500, crossing Grantor's 31.72 acre tract in Section 11, Township 9 South, Range 2, East.

F-20. Rights of Way Agreement dated June 19, 1956, between Waddy Arceneaux, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 282390, Book R-15, Page 502, crossing Grantor's land in Section 11, Township 9 South, Range 2 East, and shown on plat attached to the agreement.

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F-21. Rights of Way Agreement dated May 8, 1957, between Edward Arceneaux, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 288640, Book O-16, Page 492, on and crossing Grantor's 42.23 acre and 61.01 acre tracts of land in Section 12, Township 9 South, Range 2 East.

F-22. Rights of Way Agreement dated May 9, 1957, between Sidney Broussard, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 288641, Book O-16, Page 494, crossing Grantor's 12.30 acre tract in Section 12, Township 9 South, Range 2 East.

F-23. Rights of Way Agreement dated May 4, 1957, between Elton Dupuis, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 288642, Book O-16, Page 496; and,

Rights of Way Agreement dated May 6, 1957, between Ceasar Dupuis, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 288643, Book O-16, Page 498; and,

Rights of Way Agreement dated May 4, 1957, between Adoriska Cormier, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 288644, Book O-16, Page 500, which cross Grantor's 12.15 acre tract in Section 11, Township 9 South, Range 2 East.

F-24. Right of Way Agreement dated May 8, 1957, between Waddy Arceneaux, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 288645, Book O-16, Page 502, crossing Grantor's lands in Section 11, Township 9 South, Range 2 East, and shown on plat annexed to the agreement.

F-25. Right of Way Agreement dated August 24, 1955, between Marie Petitjean, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276437, Book V-14, Page 466, on Grantor's lands in Section 48, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-26. Right of Way Agreement dated September 4, 1955, between Nelson G. Hulin, et al, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 277051,

Book X-14, Page 443, crossing Grantor's land in Sections 4 and 48, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-27. Right of Way Agreement dated August 31, 1955, between John Bearb, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 276438, Book V-14, Page 470, crossing Grantor's lands in Section 4, Township 9 South, Range 2 East, and shown on plat of survey annexed to the agreement.

F-28. Right of Way Agreement dated September 21, 1957, between Ray E. Babineaux as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 290929, Book W-16, Page 447, on Grantor's 31.35 acre tract in Section 6, Township 9 South, Range 3 East.

F-29. Right of Way Agreement dated September 24, 1957, between Elton Douget, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 290930, Book W-16, Page 450, crossing Grantor's 32 acre tract in Section 6, Township 9 South, Range 3 East.

F-30. Right of Way Agreement dated September 24, 1957, between Louis Cormier, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 291340,

Book Y-16, Page 79, crossing Grantor's 88 acre tract in Section 1, Township 9 South, Range 2 East and in Section 6, Township 9 South, Range 3 East.

F-31. Right of Way Agreement dated September 25, 1957, between Martin Rourk and Elise Cormier Rourk, his wife, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 290932, Book W-16, Page 455, crossing Grantor's lands in Section 1, Township 9 South, Range 2 East and in Section 6, Township 9 South,

Range 3 East, and shown on plat annexed to the agreement.

F-32. Right of Way Agreement dated September 26, 1957, between Arthur Cormier, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 290928, Book W-16, Page 444, crossing Grantor's 11 acre tract in Section 1, Township 9 South, Range 2, East.

F-33. Right of Way Agreement dated September 24, 1957, between Aristile Cormier, et al, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 291339, Book Y-16, Page 76, crossing Grantor's 21 acre tract and 23 acre tract in Sections 1 and 12, Township 9 South, Range 2 East.

F-34. Right of Way Agreement dated September 26, 1957, between Lawrence Rivette, et al, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 290927, Book W-16, Page 442, crossing Grantor's 21 acre tract in Sections 1 and 12, Township 9 South, Range 2 East.

F-35. Right of Way Agreement dated September 25, 1957, between Thelice Gaspard, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 290925, Book W-16, Page 437, crossing Grantor's 40 acre tract in Sections 3 and 12, Township 9 South, Range 2 East.

F-36. Right of Way Agreement dated September 27, 1957, between Elton A. Arceneaux, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 290926, Book W-16, Page 440, crossing Grantor's 55 acre tract in Section 11, Township 9 South, Range 2 East.

F-37. Right of Way Agreement dated September 28, 1957, between Waddy Arceneaux, as Grantor, and Continental Oil Company, as Grantee, recorded under Entry No. 290931, Book W-16, Page 453, crossing Grantor's 28.51

acre tract in Section 11, Township 9 South, Range 2 East. Leases with ownership:

Sun Oil Company 100%.

G-1. Sun Lease No. 58,816, dated February 4, 1952, between Anaise G. Menard, et al, Lessor, and F. J. Muller, Lessee, recorded under File No. 250794, Book J-11, Page 72, covering and affecting lands described as follows, to-wit:

> 80 acres of land, more or less, located in Section One (1), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:
>
> On the North by lands of Noah Stelly, Mrs. D. G. Babineaux, Ophey Benoit; East by lands of Mrs. D. G. Babineaux, Marcelus Savoy, Wilson Benoit, Ophey Benoit; South by lands of Piere N. Cormier or assigns, Noah Stelly; West by lands of Allen Faul, Armogene Meche, Mrs. N. Stelly.

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G-2. Sun Lease No. 58,781, dated February 2, 1952, between Wilton Benoit, Lessor, and F. J. Muller, Lessee, recorded under File No. 250634, Book I-11, Page 391, covering and affecting and und. 19/20ths interest in lands described as follows, to-wit:

> 27 acres of land, more or less, located in Section One (1), Township Nine South, Range Two East, and Section Six (6), Township Nine South, Range Three East, Acadia Parish, Louisiana, bounded as follows, to-wit:
>
> On the North by lands of Aug. Martinez, Marcelus Savoy; East by lands of Jas. Cormier, Jr.; South by lands of Ophey Benoit; West by lands of Andrew Menard.

G-3. Sun Lease No. 58,817, dated February 2, 1952, between Amanda Menard, Lessor, and F. J. Muller, Lessee, recorded under File No. 250796, Book J-11, Page 80 covering and affecting an und. 1/20th interest in lands described as follows, to-wit:

27 acres of land, more or less, located in Section One (1), Township Nine South, Range Two East, and Section Six (6), Township Nine South, Range Three East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of Aug. Martinez, Marcelus Savoy; East by lands of Jas. Cormier, Jr.; South by lands of Ophey Benoit; West by lands of Andrew Menard.

G-4. Sun Lease No. 58,776, dated February 2, 1952, between Ophie Benoit, Lessor, and F. J. Muller, Lessee, recorded under File No. 250624, Book I-11, Page 366, covering and affecting lands described as follows, to-wit:

27 acres of land, more or less, located in Section One (1), Township Nine South, Range Two East, and Section Six (6), Township Nine South, Range Three East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of Wilson Benoit; East by lands of Jas. Cormier, Jr.; South by lands of Pierre N. Cormier Estate; West by lands of Andrew Menard.

G-5. Sun Lease No. 58,782, dated February 4, 1952, between Louis Cormier, Lessor, and F. J. Muller, Lessee, recorded under File No. 250636, Book I-11, Page 396, and as amended by an instrument dated April 26, 1954, executed by Louis Cormier and recorded under File No.

265840, Book K-13, Page 723, covering and affecting lands described as follows, to-wit:

48.5 acres of land, more or less, located in Section One (1), Township Nine South, Range Two East and Section Six (6), Township Nine South, Range Three East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of Mrs. Andrew Menard, et al, in part, and in part by Ophey Benoit; East by Laura Cormier Doucet, in part, and in part by Alton and Hilda L. Douget; South by lands of Elise Cormier Rourk, in part, and in part by Arthur Cormier; West by lands of Noah Stelly, in part, and in part by Mrs. Telesmar Blanchard.

G-6. Sun Lease No. 58,783, dated February 4, 1952, between Arthur Cormier, Lessor, and F. J. Muller, Lessee, recorded under File No. 250638, Book I-11, Page 401, and as

amended by an instrument dated April 2, 1952, executed by Arthur Cormier and recorded under File No. 251708, Book M-11, Page 210, covering and affecting lands described as follows, to-wit:

12 acres of land, more or less, located in Sections One (1), and Twelve (12), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of Louis Cormier; East by lands of Elise Cormier Rourk; South by lands of Joel W. Gouldsby and Agnes Belle Foster Estate and West by Telesmare Blanchard.

G-7. Sun Lease No. 60,044, dated December 4, 1952, between Elise Cormier Rourk, Lessor, and F. J. Muller,

Lessee, recorded under File No. 255827, Book A-12, Page 50, as ratified by instrument dated April 26, 1954, executed by Martin Rourk and recorded under File No. 265989, Book L-13, Page 348, covering and affecting lands described as follows, to-wit:

48.5 acres of land, more or less, located in Section One (1), and/or Twelve (12), Township Nine South, Range Two East and Section Six (6), Township Nine South, Range Three East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of Louis Cormier; East by lands of Laura Doucet Cormier, Mrs. O. Mier, Houston Blanchard; South by lands of Mrs. O. Mier, Houston Blanchard; West by lands of Arthur Cormier.

G-8. Sun Lease No. 58,780, dated February 2, 1952, between Houston B. Blanchard, Lessor, and F. J. Muller, Lessee, recorded under File No. 250632, Book I-11, Page 386, as amended by instrument dated April 2, 1952, executed by Houston B. Blanchard and recorded under File No. 251707, Book M-11, Page 207, as ratified by instrument dated May 1, 1954, executed by Alicia Roach Blanchard and recorded under File No. 265985, Book L-13, Page 346; as amended by instrument dated November 29, 1954, executed by Houston B. Blanchard and D. C. Ellwood and recorded under File No. 270065, Book Y-13, Page 525, covering and affecting lands described as follows, to-wit:

That certain tract or parcel of land containing Twenty-four and 61/100 (24.61) acres, more or less, situated in Section One (1), Township Nine South, Range Two East, and Section Twelve (12), Township Nine South, Range Two East, Louisiana Meridian, Acadia Parish, Louisiana, bounded as follows, to-wit:

North by Elise Cormier Rourk; East by Alfred Latiolais and Eve Cormier; South by Joel W. Goldsby, et al; West by Elise Cormier Rourk and Joel W. Goldsby, et al.

G-9. Sun Lease No. 60,969, dated October 15, 1953, between Henry Arceneaux, Lessor, and F. J. Muller, Lessee, recorded under File No. 261035, Book ....., Page ....., covering and affecting lands described as follows, to-wit:

6 acres of land, more or less, located in Section Twelve (12), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of T. Gaspard; East by lands of E. Arceneaux; South by lands of E. Arceneaux; West by lands of Elton Arceneaux.

G-10. Sun Lease No. 60,976, dated October 10, 1953, between Curtis Johnson, Lessor, and F. J. Muller, Lessee, recorded under File No. 260947, Book S-12, Page 14, covering and affecting lands described as follows, to-wit:

74 acres of land, more or less, located in Sections Twelve (12) and Thirteen (13), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of Edward Arceneaux, Sidney Broussard; East by lands of Sidney Broussard; Ashton S. Petitjean; South by lands of Ashton S. Petitjean, Emile J. B. Petitjean; Caesar Credeur; West by lands of M. Broussard, Clarence Meche, Alfred Webber.

G-11. Sun Lease No. 65,079, dated January 10, 1958, between Louis Cormier, Lessor, and Sun Oil Company, Lessee, recorded under File No. 293164, Book D-17, Page

708, covering and affecting lands described as follows, to-wit:

42.37 acres of land, more or less, located in Section Thirteen (13), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of Sidney Broussard, Joel M. Gouldsby, et al; East by lands of A. Cormier; South by lands of Aristille Cormier, Ashton S. Petitjean, et al; West by lands of Ashton S. Petitjean, et al, Sidney Broussard.

G-12. Sun Lease No. 60,970, dated October 9, 1953, between Clarence Meche, Lessor, and F. J. Muller, Lessee, recorded under File No. 260951, Book S-12, Page 29, covering and affecting lands described as follows, to-wit:

60 acres of land, more or less, located in Section Fourteen (14), Township Nine South, Range 2 East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of Alfred Weber and D. Dupuis; East by lands of Curtis Johnson; South by lands of M. Broussard; West by lands of Mrs. T. Petitjean.

G-13. Sun Lease No. 59,985, dated November 14, 1952, between John Bearb, et ux, Lessor, and Sun Oil Company, Lessee, recorded under File No. 255477, Book Y-11, Page 526, covering and affecting lands described as follows, insofar but only insofar as said lease covers 16 acres, to-wit:

16 acres of land, more or less, located in Section Fourteen (14), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of Gerard Mouton, Zepherine Breaux; East by lands of Mrs. Theophile

Petitjean; South by lands of Mrs. Theophile Petitjean; West by lands of M. Petitjean.

G-14. Sun Lease No. 58,778, dated February 1, 1952, between Waddy Arceneaux, Lessor, and F. J. Muller, Lessee, recorded under File No. 250628, Book I-11, Page 376, and as amended by instrument dated December 1, 1954, executed by Waddy Arceneaux and Sun Oil Company and recorded under File No. 270093, Book Y-13, Page 739, and as

amended by instrument dated February 1, 1958, executed by Waddy Arceneaux and Sun Oil Company and recorded under File No. 294575, Book J-17, Page 11, covering and affecting lands as follows, insofar but only insofar as said lease covers 84.628 acres, to-wit:

1. 34.552 acres of land, more or less, located in Section Forty-one (41) and Forty-two (42), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

   On the Northwest by P. H. Habetz, Rayne Land Company, Inc., Widow and Heirs of Robert J. Braquet, cemetery property, and Jean C. Prejean; on the Northeast by Jean C. Prejean, widow and Heirs of Derman Petitjean and Bayou Wikoff; on the Southeast by Bayou Wikoff; and on the Southwest by P. H. Habetz, Rayne Land Company, Inc., Widow and Heirs of Robert J. Braquet, cemetery property, and Jean C. Prejean.

2. 50.076 acres of land, more or less, located in Sections Forty-two (42) and Forty-three (43), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the Northwest by the Widow and Heirs of Jean Benoit, and Adam Dugas; on the Northeast by Widow and Heirs of Jean Benoit and Heirs of Robert Castille (formerly property of Numa Arceneaux); on the Southeast by other land of lessor not herein leased, Bayou Wikoff, and Edward Arceneaux; and on the Southwest by Edward Arceneaux and Widow and Heirs of Dermas Petitjean.

G-15. Sun Lease No. 58,808, dated February 13, 1952, between Leonce Breaux, Lessor, and F. J. Muller, Lessee, recorded under File No. 250785, Book J-11, Page 46, covering and affecting lands described as follows, insofar but only insofar as said lease covers 4.4 acres, to-wit:

4.4 acres of land, more or less, located in Section Forty-three (43), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North by lands of Basil Sonnier; East by lands of Bayou Wikoff and or G. Mouton; South by lands of G. Mouton, M. Petitjean, L. M. Castille, D. Mouton; West by lands of W. Arceneaux.

G-16. Sun Lease No. 59,290, dated March 27, 1952, between Basil Sonnier, Lessor, and Albert D. Miller, Lessee, recorded under File No. 252328, Book S-11, Page 382, as ratified by instrument dated May 3, 1956, executed by Basil Sonnier and recorded under File No. 281079, Book M-15, Page 388; and as amended by instrument dated January 18, 1957, executed by Basil Sonnier and Sun Oil Company and recorded under File No. 286671, Book G-16, Page 457, covering and affecting lands described as follows, insofar but only insofar as said lease covers 125 acres, to-wit:

(A2684)

A certain tract of land containing 125 acres, more or less, located in Sections forty-three (43) and forty-four (44), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows:

Northwest by N. J. Gossen, William Gossen, Della Petitjean Gossen, and possibly by Adam Dugas; Northeast by Whitney Brasseaux and Bayou Wikoff; Southeast by Bayou Wikoff, Lize Mire, Waddy Arceneaux and Lear Benoit; Southwest by Lear Benoit, Adam Dugas, Lize Mire, and possibly Waddy Arceneaux.

A2685

SAVE AND EXCEPT a certain tract of land lying in Irregular Section Forty-three (43), Township Nine South, Range Two East, Acadia Parish, Louisiana, containing 16.57 acres, more or less and being more particularly described as follows: Beginning at a point on the East line of Section 43, Township Nine South, Range Two East, said point being N 35° 34′ W 2101.3 feet from the Southeast Corner of said Section 43. Thence South 1250.3 feet; N 36° 06′ W 1119.4 feet, S 53° 53′ W 550.4 feet, N. 36° 06′ W 218.9 feet, N 54° 40′ E 1287.6 feet to the East line of said Section 43. Thence with the East line of said Section 43, S 35° 34′ E 310.4 feet to the point of beginning.

G-17. Sun Lease No. 64,242, dated February 21, 1957, between Whitney Brasseaux, Lessor, and Sun Oil Company, Lessee, recorded under File No. 286842, Book H-16, Page 158, covering and affecting lands as follows, to-wit:

A certain tract of land containing 35.93 acres, more or less, lying in Section Fifty-four (54), Township Eight South, Range Two East, and in Section Forty-

four (44), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the Northeast by Amatile Lacombe, et al, on the Southeast by Amatile Lacombe, et al, and Bayou Wikoff, on the Southwest by Basil Sonnier and Louetta G. Buteaud, et al (formerly Dermas Petitjean) and on the Northwest by Roy Andrus, Amatile Lacombe, et al, and Louette G. Buteaud, et al (formerly Dermas Petitjean).

G-18. Sun Lease No. 64,257, dated March 1, 1957, between Claude Cahanan, et al, Lessor, and Sun Oil Company, Lessee, recorded under File No. 286944, Book H-16, Page 587; and lease dated February 27, 1959, from Amatile Lacombe et al to Sun Oil Company, recorded under file No. ....., covering and affecting lands described as follows, to-wit:

A certain tract of land containing 17.6 acres, more or less, lying in Section Fifty-four (54), Township Eight South, Range Two East, and in Section Forty-four (44), Township Nine South, Range Two East, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the Northeast by Marcial Broussard and Estate of Aurelien Cormier; on the Southeast by Bayou Wikoff and Whitney Brasseaux; on the Southwest by Whitney Brasseaux; on the Northwest by Whitney Brasseaux and Roy Andrus.

G-19. Sun Lease No. 61,260, dated January 2, 1954, between Stamm-Raymond, Inc., Lessor, and Sun Oil Company, Lessee, recorded under File No. 263978, Book D-13, Page 248, covering and affecting an Und. ½ interest insofar and only insofar as said lease covers the following described lands, to-wit:

A certain tract of land situated in Section One (1), Township Nine South, Range Two East, Louisiana

Meridian, Acadia Parish, Louisiana, containing 40 acres, more or less, and bounded as follows, to-wit:

On the North by lands of Nelson Stelly; on the South by lands of Allen J. Faul; on the East by lands of Nelson Stelly, Andre Menard Estate; on the West by Marie B. Cormier and Dupreville Cormier.

A2686

G-20. Sun Lease No. 64,160, dated December 28, 1956, between Dumas Cormier, Lessor, and Sun Oil Company, Lessee, recorded under File No. 285935, Book E-16, Page 44, covering and affecting lands described as follows, to-wit:

A certain tract of land containing 47.55 acres, more or less, located in Sections Three (3), Forty-Six (46) and possibly in Section Forty-Four (44), Township Nine South, Range Two East, Acadia Parish, Louisiana, and bounded as follows, to-wit:

On the North by Roy Andrus, Aurelien Cormier Estate, Joseph Lantier, Whitney Brasseaux, Isaac Melancon; East by Isaac Melancon; South by Ovey Arceneaux, Pierre Nema Cormier, Moise Arceneaux; West by Bayou Wikoff, Pierre Numa Cormier, Moise Arceneaux; said tract of land being being more accurately described as Lots Nos. 3-A, 4-A, 5-A, 3-B, 4-B, 5-B of the Act of Partition by the Heirs of Gustave Cahanan, dated February 7, 1939, and recorded in Conveyance Book K-6, Pages 283, et seq., File No. 148384 of the Records of Acadia Parish, Louisiana, and shown particularly on the Plat or Survey made by F. S. Roberts, C. E., dated February 7, 1939, and attached to said Act of Partition.

G-21. Sun Lease No. 64,719, dated March 27, 1957, between Basil Sonnier, Lessor, and Sun Oil ompany, Lessee, recorded under File No. 290296, Book U-16, Page 228, covering and affecting lands in Acadia Parish, Louisiana, described as follows, to-wit:

> A certain tract of land containing 8.60 acres, more or less, lying in Section Forty-Three (43), Township Nine South, Range Two East, and being more particularly described as follows, to-wit:
>
> > Beginning at a point on the Northeast Line of Irregular Section 43, Township Nine South, Range Two East, said point being N. 35° 34′ W 2101.3 feet from the intersection of the Northeast line of said Section 43 and the West Bank of Bayou Wikoff; Thence S 54° 26′ W 736.7 feet, S. 36° 06′ E. 1017.1 feet, North 1250.3 feet to the place of beginning, and containing 8.60 acres, more or less.

G-22. Sun Lease No. 58,809, dated February 12, 1952 between Adolph Petitjean et al, Lessor, and F. J. Muller, Lessee, recorded under File No. 250787, Book J-11, Page 51, as amended on December 21, 1954, by Florence Petitjean Hoffpauir, recorded under File No. 270873 in Book C-14, Page 386; as amended on January 4, 1955 by Marie Petitjean Thomas et al, recorded under File No. 270872 in Book C-14, Page 383; as amended on December 15, 1954 by Martin Petitjean, recorded under File No. 270871 in Book C-14, Page 381, and as amended on February 15, 1957 by Adolph Petitjean et al, recorded under File No. 289793 in Book ....., Page ....., insofar but only insofar as said lease covers 2.26 acres of land in Acadia Parish, Louisiana described as follows, to-wit:

> 2.26 acres located in Section Fourteen (14), Township 9 South, Range 2 East, which is included within the confines of the Elton Arceneaux No. 1 Unit estab-

lished by the Department of Conservation Order No. 307-D, effective October 1, 1957 and being bounded as follows, to-wit: On the North by lands of Leonce Breaux and Waddy Arceneaux; on the East by Clarence Meche; on the South by the lands of Adolph Petitjean et al; on the West by John Bearb and other lands of Adolph Petitjean et al.

G-23. Sun Lease No. 65,427, dated June 3, 1958, but effective February 12, 1959, between Adolph Petitjean, et al, Lessor, and Continental Oil Company, Lessee, recorded

under File No. 295775, Book ....., Page ....., insofar but only insofar as said lease covers 37.56 acres described as follows, to-wit:

37.56 acres, more or less, located in Irregular Section Fourteen (14), Township Nine South, Range Two East, Acadia Parish, Louisiana, and being more particularly described as follows, to-wit:

Beginning at the Northwest Corner of Irregular Section Fourteen (14); Thence N 88° 58′ E 1061.4′ to the Northwest Corner of the John Bearb 17.75 acre tract; Thence S 0° 03′ E 564.0′; Thence N 88° 58′ E 1368.9′; Thence N 0° 20′ 30″ E 5641.1′ to the Northeast Corner of the John Bearb 17.75 acre tract; Thence N 88° 58′ E 24.4′; Thence S 65° 01′ E 461.75′; Thence S 72° 04′ E 276.1′ to a point in the west line of the Clarence Meche 59.46 acre tract; Thence S 0° 06′ W 1032.4′; Thence S 89° 10′ 30″ W 676.5′; Thence N 0° 07′ 30″ W 195.8′; Thence N 88° 11′ W 452.0′ to the Northwest Corner of Mrs. Emma B. Moore 13.44 acre tract; Thence N 62° 16′ 30″ W 2295.0′ to the place of beginning and containing 37.56 acres, more or less.

G-24. Sun Lease No. 65,085, dated January 12, 1958, between Gladys Petitjean, et al, Lessor, and Sun Oil Company, Lessee, recorded under File No. 293170, Book D-17, Page 734, insofar and only insofar as said lease covers 28.33 acres described as follows, to-wit:

> 28.33 acres, more or less, located in Section Thirteen (13), Township Nine South, Range Two East, Acadia Parish, Louisiana, and being more particularly described as follows, to-wit:
>
> > Beginning at the northerly Northeast Corner of the Gladys Petitjean 399.83 acre tract; Thence S 0° 10′ E 957.7′ to the Southwest Corner of the Louis Cormier 42.37 acre tract;
> >
> > Thence S 89° 21′ W 1850.6′ to the center line of a drainage canal; Thence with the center line of the drainage canal N 58° 32′ E 47.3′, N 25° 52′ E 75.0′, N 10° 25′ E 185.0′, N 41° 52′ E 400.0′, N 78° 32′ E 240.0′, N 73° 51′ E 1289.9′ to the place of beginning and containing 28.33 acres, more or less.

G-25. Sun Lease No. 63,817, dated May 10, 1956, between Cecelia Guidry Edwards, et al, Lessor, and Sun Oil Company, Lessee, recorded under File No. 283216, Book U-15, Page 196, covering and affecting an Und. 4/5ths interest in lands described as follows, to-wit:

> A certain tract of land situated in Section Forty-Four (44) and possibly in Section Forty-six (46), Township Nine South, Range Two East, containing three (3) acres, more or less, Acadia Parish, Louisiana, bounded as follows, to-wit:
>
> > On the North, South and East by Bayou Wikoff and on the West by Basil Sonnier and Aurelien Cormier. Being the same property acquired by Louis Guidry from A. V. Lyons on November

28, 1883 by deed recorded under Act No. 22938 in Conveyance Book O-2, Page 379, records of Acadia Parish, Louisiana.

G-26. Sun Lease No. 65,372, dated July 10, 1958, between Rufus Guidry, et al, Lessor, and Sun Oil Company, Lessee, recorded under File No. 297415, Book T-17, Page 481, covering and affecting an Und. 1/10th interest in lands described as follows, to-wit:

A2688

A certain tract of land situated in Section Forty-four (44) and possibly in Section Forty-six (46), Township Nine South, Range Two East, containing three (3) acres, more or less, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North, South and East by Bayou Wikoff and on the West by Basil Sonnier and Aurelien Cormier. Being the same property acquired by Louis Guidry from A. V. Lyons on November 28, 1883 by deed recorded under Act #22938 in Conveyance Book O-2, page 379, records of Acadia Parish, Louisiana.

G-27. Sun Lease No. 65,430, dated July 11, 1958, between Annie Woolridge Harmon, et al, Lessor, and Sun Oil Company, Lessee, recorded under File No. 298374, Book W-17, Page 656, covering and affecting an Und. 1/10th interest in lands described as follows, to-wit:

A certain tract of land situated in Section Forty-four (44) and possibly in Section Forty-six (46), Township Nine South, Range Two East, containing three (3) acres, more or less, Acadia Parish, Louisiana, bounded as follows, to-wit:

On the North, South and East by Bayou Wikoff and on the West by Basil Sonnier and Aurelien

Cormier. Being the same property acquired by Louis Guidry from A. V. Lyons on November 28, 1883, by deed recorded under Act #22938 in Conveyance Book O-2, Page 379, records of Acadia Parish, Louisiana.

G-28. Sun Lease No. 62,100 dated December 1, 1954, between Waddy Arceneaux, Lessor, and Sun Oil Company, Lessee, recorded under File No. 269941, Book Y-13, Page 262, covering and affecting lands described as follows, to-wit:

Tract 1. A certain tract of land situated in Section 43, Township 9 South, Range 2 East, Acadia Parish, Louisiana, containing one and 7/10 (1.7) acres, more or less, and bounded, now or formerly, as follows: On the Northeast by Basile Sonnier and Bayou Wikoff; On the Southeast by Bayou Wikoff; on the Northwest by Basile Sonnier and/or Estate of Jean Benoit; and on the Southwest by Leonce Breaux.

Tract 2. A certain tract of land situated in Acadia Parish, Louisiana, lying in Section 43, Township 9 South, Range 2 East, containing five and one-tenth (5.1) acres more or less, and bounded, now or formerly, as follows: On the Northwest by other land of lessor not herein leased; On the Northeast by Heirs of Robert Castille (formerly property of Numa Arceneaux) and Bayou Wikoff; On the Southeast and Southwest by Bayou Wikoff.

The above two tracts of land being the same land acquired by Lessor from Martin Petitjean by deed dated June 16, 1948, being Act #209511, Conveyance Book B-9, Page 590, Records of Acadia Parish, Louisiana.

G-29. Sun Lease No. 65,759, dated January 2, 1959 between Nelda Thibodeaux Sonnier, widow of Basil Sonnier, et al, as Lessors, and Sun Oil Company, as Lessee, recorded under File No. 301306, Book H-18, Page 381, covering and affecting lands described as follows, to-wit:

A certain tract of land situated in Irregular Sections Forty-three and Forty-four (43 & 44), Township Nine (9) South, Range Two (2) East, containing 76.16 acres,

more or less, and being more particularly described as follows: BEGINNING at the most Northerly corner of the Basil Sonnier 123.11 acre tract in Irregular Sections 43 and 44, T9S, R2E, Acadia Parish, Louisiana; THENCE South 48 deg. 51′ West 351.3 feet; South 41 deg. 42′ West 1967.7 feet; South 54 deg. 12′ West 1287.6 feet to a point for the most Westerly corner of this tract; THENCE South 36 deg. 34′ East 218.9 feet, North 53 deg. 25′ East 550.4 feet; South 36 deg. 14′ East 1124.7 feet; North 0 deg. 28′ West 1356.0 feet; North 89 deg. 32′ East 1044.3 feet to a point on the right descending bank of Bayou Wikoff; THENCE in an Easterly direction with the right descending bank of Bayou Wikoff to a point that is South 36 deg. 22′ East 2061.5 feet from the place of beginning; THENCE North 36 deg. 22′ West 2061.5 feet to the place of beginning and containing 76.16 acres, more or less.

The above property is more particularly described as being all of that portion of the Basil Sonnier 123.11 acre tract in Irregular Sections 43 and 44, Township 9 South, Range 2 East, which is not at this date situated within Nodosaria Sand Unit 7, created by Order No. 307 of the Commissioner of Conservation for the State of Louisiana, dated April 19, 1955 and effective from and after May 1, 1955.

Leases affected by the following operating agreements:

1. Operating agreement dated November 5, 1955, between Warren Petroleum Corporation and General Gas Corporation.

2. Operating agreement dated December 19, 1955, between Warren Petroleum Corporation, Sun Oil Company and General Gas Corporation, covering an agreed contract area as to all horizons.

3. Working interest pooling agreement, dated January 13, 1956, amending agreement dated December 19, 1955 referred to above, between Sun Oil Company, Warren Petroleum Corporation and General Gas Corporation pooling the interests of the parties.

4. Amendment to operating agreement and pooling agreement referred to above, dated June 19, 1956, between Sun Oil Company, Warren Petroleum Corporation and General Gas Corporation which corrects the interests of the parties to such agreements.

5. Amendment dated April 16, 1958, as to all of the foregoing operating and pooling agreements between Sun Oil Company, Gulf Oil Corporation and General Gas Corporation, under the terms of which the Contract Area is conformed to the geographical limits of the Klumpp "D" Sand Unit as established by Order 110-E of the Commissioner of Conservation for the State of Louisiana, effective January 1, 1957 (deleting all areas outside the limits of such unit) and fixing the working interests of the parties in such agreement as follows:

Gulf Oil Corporation.....45.8576%

(successor to Warren)

General Gas Corporation....36.9177%
Sun Oil Company.....17.2247%

Annexed hereto as Attachment 1 and made a part hereof for full particulars, is a plat on which the described tracts covered by the leases next following under Numbers 1-16, inclusive, are identified and better shown. The parties understand and agree that insofar,

but only insofar, as the tracts described under the leases next following under Numbers 1-16, inclusive, (which tracts are more fully shown and numbered on the plat annexed hereto as Attachment 1) cover and affect any shaded area identified and shown on the said plat, the assignment and conveyance shall be less and except, and Grantors reserve, all rights they or any of them have, (in addition to the reservations set out in the body of the assignment and conveyance) in such leasehold rights to said leases covering tracts on the shaded area from the surface of the ground to a depth of 12,000 feet subsurface:

H-1. Continental Lease No. 88822 from Eddie Melancon, et ux, as Lessor, to Charles R. Houssiere, Jr., as Lessee, dated December 9, 1953, recorded under Entry No. 262362, Book X-12, Page 69, covering the following described lands, but insofar and only insofar as said lease covers 24.79 acres and being Tract No. 22 shown on the plat:

That certain tract of land containing 25 acres, more or less, located in Section 45, Township 9 South, Range 2 East, Acadia Parish, Louisiana and being further described as bounded by land now or formerly owned as follows:

Northeast by Lezie Comeaux, Southeast by D. Cormier, Southwest by E. M. Tanner, and Northwest by Jaques Melancon.

H-2. Continental Lease No. 88823 from William Meche et al, as Lessor, to Charles R. Houssiere, Jr., as Lessee, dated December 9, 1953, recorded under Entry No. 262709, Book Y-12, Page 292, covering the following described lands, in Acadia Parish, Louisiana, but insofar and only insofar as said lease covers 38.68 acres and being Tracts 1 and 4 shown on the plat:

120 acres of land, more or less, situated in Section 61, Township 8 South, Range 2 East, Louisiana Meridian, and Section 45, Township 9 South, Range 2 East, Louisiana Meridian, and more fully described as follows:

Bounded on the North by Amede Meaux, or assigns, and Howard E. Bruner et al, on South by Telesphore Thibodeaux, Reo Mire, and E. M. Tanner, on East by Rousseau Mouton, and on West by Bayou Wikoff. Also:

8 acres of land, more or less, situated in Section 61, Township 8 South, Range 2 East, Louisiana Meridian, and more fully described as follows:

Bounded on North by E. M. Tanner, on East by Theogene Melancon, on South by Emile Navarre, on West by Emile Navarre;

Less and except that portion of the above described property which is included in and forms a part of Unit "E" as created by Louisiana Department of Conservation in Order No. 110-A; said Order being recorded in Conveyance Book J-8, Page 396, under Entry No. 199554 of the Records of Acadia Parish, Louisiana.

H-3. Continental Lease No. 88824 from Agnes Richard Tanner, as Lessor, to Charles R. Houssiere, Jr., as Lessee, dated December 9, 1953, recorded under Entry No. 262355,

Book X-12, Page 44, covering the following described lands, but insofar and only insofar as said lease covers 11.91 acres, and being Tract No. 2 shown on the plat:

18.75 acres more or less located in Sections 61, Township 8 South, Range 2 East, and Section 45, Township 9 South, Range 2 East, Acadia Parish, Louisiana, bounded now or formerly as follows:

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Northeast by François Thibodeaux Estate, Onezime Melancon, William Meche, Rousseau Mouton, Jacques Melancon, and Eddie Melancon, Southeast by Marie B. Cormier, Southwest by Theogene Melancon, Alex Boullion, Telesmar Blanchard, William Meche, Marcial Roach, Dormas Sonnier, and on the Northwest by Bayou Wikoff.

H-4. (a) Continental Lease No. 88825 from Ethel Melancon et al, as Lessors, to Charles R. Houssiere, Jr., as Lessee, dated December 9, 1953, recorded under Entry No. 262356, Book X-12, Page 48, covering the following described lands, in Acadia Parish, Louisiana, being 34.82 acres and being Tracts 5 and 8 shown on the plat:

Being 40 acres more or less located in Section 61, Township 8 South, Range 2 East, and Section 45, Township 9 South, Range 2 East, and being further described as being Lots 9 and 10 of the Northwestern half of the Roach Subdivision, and Lot 1 of the Southeastern half of the said Roach Subdivision, as further described;

Northeast by E. M. Tanner, Southeast by Telesmar Blanchard, Southwest by Emile Navarre, and on the Northwest by Wm. Meche; and Lots 4, 5, 6, 7, 8, 9, and 10, of the Southeastern half of the said Roach Subdivision, as further described;

Northeast by E. M. Tanner, Southeast by Marie B. Cormier, Southwest by Emile Navarre, and on the Northwest by Mrs. Alex Boullion.

(b) Lease from James Russell Melancon, et al, as Lessors, to Charles R. Houssiere, Jr., as Lessee, dated January 5, 1954, recorded under Entry No. 262916, covering the following described lands, in Acadia Parish, Louisiana, 34.82 acres and being Tracts 5 and 8 shown on the plat:

Tract No. 1: A certain tract of land situated in Section Forty-five, Township Nine South, Range Two East (Sec. 45, T.9S., R.2E.), Acadia Parish, Louisiana, containing Thirty (30) acres, more or less, bounded, now or formerly, North by E. M. Tanner and Alex Boullion, South by Marie Broussard Cormier and Emile Navarre, Broussard Cormier and West by Alex Boullion Emile Navarre. (Note: This tract of land is possibly partly in Section 61, T.8S., R.2E.)

Tract No. 2: A certain tract of land situated in Section Sixty-one, Township Eight South, Range Two East (Sec. 61, T.8S., R.2E.), Acadia Parish, Louisiana, containing Ten (10) acres, more or less, bounded, now or formerly, North by E. M. Tanner and William Meche, South by Telesmar Blanchard and Emile Navarre, East by E. M. Tanner and Telesmar Blanchard and West by William Meche and Emile Navarre.

H-5. Continental Lease No. 88826 from Mrs. Ozia Roach Boullion, as Lessor, to Charles R. Houssiere, Jr., as Lessee, dated December 9, 1953, recorded under Entry No. 262363, Book X-12, Page 73, covering the following described lands, in Acadia Parish, Louisiana, being 3.48 acres and being Tract No. 7 shown on the plat:

3.4 acres, more or less, located in Section 61, Township 8 South, Range 2 East, and Section 45, Township

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9 South, Range 2 East, and being Lot #3 of the Southeastern half of the Roach Subdivision, as further described:

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Northeast by E. W. Tanner, Northwest by Telesmar Blanchard, Southeast by Theogene Melancon, and on the Southwest by Emile Navarre.

H-6. Continental Lease No. 88827 from Alicia Roach Blanchard, as Lessor, to Charles R. Houssiere, Jr., as Lessee, dated December 9, 1953, recorded under Entry No. 262354, Book X-12, Page 41, covering the following described lands, in Acadia Parish, Louisiana, being 3.48 acres and being Tract No. 6 shown on the plat:

3.4 acres, more or less, located in Section 61, Township 8 South, Range 2 East, and being Lot #2 of the Southeastern half of the Roach Subdivision, of said Section, as further described:

Northeast by E. M. Tanner, Southeast by Mrs. Alex Boullion, Southwest by Emile Navarre, and on the Northwest by Theogene Melancon.

H-7. Continental Lease No. 88828 from Marie Guidry Navarre et al, as Lessor, to Charles R. Houssiere, Jr., as Lessee, dated December 9, 1953, recorded under Entry No. 262918, Book Z-12, Page 183, as amended by Act of Correction dated December 9, 1953, recorded under Entry No. 273738, Book M-14, Page 333, covering the following described lands, but insofar and only insofar as said lease covers 59.79 acres in Acadia Parish, Louisiana, and being Tract No. 9 shown on the plat:

86 acres, more or less, situated in Section 61, Township 8 South, Range 2 East, and Section 45, Town-

ship 9 South, Range 2 East, and being further described as being bounded now or formerly as follows:

Northeast by Marcila Roach, Dermas Sonnier, E. M. Tanner, Wm. Meche, Theogene Melancon, Telesmar Blanchard, and Mrs. Alex Boullion, Southeast by Ovey Arceneaux, Isaac Melancon, and Bayou Wikoff, and on the Northwest by Bayou Wikoff, less and except the following described lands, insofar and only insofar as said lease and lands relate and affect the Homeseekers "E" Sand:

That certain tract of land consisting of .27 acre described in the above oil, gas and mineral lease, which is included and embraced within the confines of Homeseekers "E" Sand Unit No. 2, Rayne Field, as established by Order 307-A of the Commissioner of Conservation for the State of Louisiana, effective March 1, 1956, recorded as Original No. 279582, Conveyance Records, Acadia Parish, Louisiana.

H-8. Continental Lease No. 88829 from Isaac Melancon et al, as Lessor, to Charles R. Houssiere, Jr., as Lessee, dated December 9, 1953, recorded under Entry No. 262361, Book X-12, Page 65, covering the following described lands, but insofar and only insofar as said lease covers 67.60 acres, and being Tracts Nos. 10, 11 and 12, and insofar as said lease covers 13.24 acres, in Acadia Parish, Louisiana and being Tract No. 23, all shown on the plat:

56.78 acres, more or less, situated in Section 62, T8S, R2E, and Sections 3 and 46, T9S, R2E, bounded now or formerly as follows: NE by Emile Navarre, Ovey Arceneaux, Mrs. B. Seaux, SE by Ovey Arceneaux, Mrs. B. Seaux and Emile Cormier, SW by Emile Cor-

mier, Gustave Cahanan and Ovey Arceneaux, and NW by Ovey Arceneaux and G. Benoit, and Bayou Wikoff. Also on SW, by Bayou Wikoff.

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14.92 acres situated in Section 46, T9S, R2E, bounded now or formerly as follows: NE by Est. of Mervine Kahn and Ovey Arceneaux, SE by Gustave Cahanan and Renia Cahanan, SW by Gustave Cahanan and Bayou Wikoff, and NW by Bayou Wikoff.

3 acres, more or less, situated in Section 46, T9S, R2E, bounded now or formerly as follows: North by Ovey Arceneaux, East by Gully, South and West by lands of Isaac Melancon, leased herein.

H-9. Continental Lease No. 88830 from Felix Castille, as Lessor, to Charles R. Houssiere, Jr. as Lessee, dated December 9, 1953, recorded under Entry No. 262711, Book Y-12, Page 301, covering the following described lands in Acadia Parish, Louisiana, being 2.08 acres and being Tract 11 shown on the plat:

3 acres, more or less, located in Section 45, Township 9 South, Range 2 East, generally being bounded by lands now or formerly as follows:

Northeast by Gravel Road, Southeast by lands of Felix Castille, Southwest by lands of Isaac Melancon.

H-10. Continental Lease No. 88830 from Ella Seaux et al, as Lessor, to Warren Petroleum Corporation, as Lessee, dated September 27, 1955, recorded in Book U-14, Page 701; and

Lease from Bertrand Seaux et al, as Lessor, to Warren Petroleum Corporation as Lessee, dated October 4, 1955, recorded in Book U-14, Page 705; and

Lease from Doris Lavergne Seaux et al, as Lessor, to Warren Petroleum Corporation, as Lessee, dated October 4, 1955, recorded in Book W-14, Page 475; and

Lease from Doris Lavergne Seaux, Natural Tutrix for the minors, Regis Antoine, Frances, Mae Joyce, and Annie Joyce Seaux, as Lessor, to Warren Petroleum Corporation, as Lessee, dated October 29, 1955, recorded in Book X-14, Page 380; and

Lease from Dudley G. Seaux, as Lessor, to Warren Petroleum Corporation, as Lessee, dated October 4, 1955, recorded in Book X-14, Page 401; and

Lease from Leeman Seaux, as Lessor, to Warren Petroleum Corporation, as Lessee, dated November 25, 1955, recorded in Book Z-14, Page 313, covering the following described lands being 7.71 acres, in Acadia Parish, Louisiana, and being Tracts Nos. 11 and 12 shown on the plat:

Tract No. 1: 1.6 acres, more or less, situated in Section 46, Township 9 South, Range 2 East, being bounded now or formerly as follows: Northeast by Emile Navarre heirs; Northwest by Ovey Arceneaux; Southwest by Ovey Arceneaux; and Southeast by Felix Castille (formerly Emile Cormier).

Tract No. 2: 5.2 acres, more or less, situated in Section 46, Township 9 South, Range 2 East, being bounded now or formerly as follows: Northeast by Ovey Arceneaux; Northwest by Isaac Melancon; Southwest by Isaac Melancon; and Southeast by Felix Castille (formerly Emile Cormier).

H-11-(a) Continental Lease No. 88831 from Amy Beard Thibodeaux et al, as Lessor, to Warren Petroleum Corporation, as Lessee, dated November 4, 1955, recorded under Entry No. 277170, Book X-14, Page 735; and

Lease from Dupre Courville et al, as Lessor, to Warren Petroleum Corporation, as Lessee, dated November 4,

1955, recorded under Entry No. 277168, Book X-14, Page 725; and

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Lease from Emar Richard et al, as Lessor, to Warren Petroleum Corporation, as Lessee, dated November 4, 1955, recorded under Entry No. 277169, Book X-14, Page 730; and

Lease from L. Lee Welch, Natural Tutor of the minor, Patricia Ann Welch, as Lessor, to Warren Petroleum Corporation, as Lessee, dated February 2, 1956, recorded under Entry No. 279191, Book F-15, Page 286; and

Lease from Emar Duplechain, as Lessor, to Warren Petroleum Corporation,as Lessee, dated May 25, 1956, recorded under Entry No. 282007, Book Q-15, Page 260; and

Lease from John B. Duplechain et al, as Lessor, to Warren Petroleum Corporation as Lessee dated January 3, 1957, recorded under Entry No. 286056, Book E-16, Page 296; and

Lease from Daniel Doucet, as Lessor, to Warren Petroleum Corporation, as Lessee, dated February 27, 1957, recorded under Entry No. 287970, Book M-16, Page 196; and

Lease from Forest Bearb et al, as Lessor, to Warren Petroleum Corporation, as Lessee, dated January 19, 1956, recorded under Entry No. 286749, as amended by instrument dated February 26, 1957, recorded under Entry No. 287969, Book M-16, Page 193, covering the following described lands, being 4.23 acres, in Acadia Parish, Louisiana, and being Tract No. 14 shown on the plat:

> 4.23 acres of land situated in Section 62, Township 8 South, Range 2 East and being bounded now or formerly as follows: On the Northwest by lands of Celestin Lavergne heirs et al, on the Northeast by

J. Ovey Arceneaux, on the Southeast by Noah Stelly and on the Southwest by Mervine Kahn Estate.

H-11-(b) Continental Lease No. 88831 from Clobule Thibodeaux et al, as Lessor, to Clet LeBlanc, as Lessee, dated January 7, 1955, recorded under Entry No. 271186, Book D-14, Page 413, covering the following described lands, being 4.23 acres, in Acadia Parish Louisiana, and being Tract No. 14 shown on the plat:

3.50 acres of land, more or less, situated in Section 62, Township 8 South, Range 2 East, Louisiana Meridian being bounded on the Northwest by lands of Waddy Arceneaux, on the Southeast by lands of Noah Stelly, on the Northeast by lands of Ovey Arceneaux, and on the Southwest by lands of Mervine Kahn, Co., and Bayou Wikoff, etc.

H-11-(c) Continental Lease No. 88832 from Dominic Lavergne, et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated October 15, 1955, recorded under Entry No. 276556, Book V-14, Page 720; and

Lease from Adetta Lavergne Domingue et al, as Lessor, to Warren Petroleum Corporation, as Lessee, dated October 15, 1955, recorded under Entry No. 276650, Book W-14, Page 201; and

Lease from Olivia Lavergne Veronie et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated October 15, 1955, recorded under Entry No. 276557, Book V-14, Page 724; and

Lease from Annaise Lavergne, as Lessor, to Warren Petroleum Corporation, as Lessee, dated October 15, 1955, recorded under Entry No. 276651, Book W-14, Page 205, covering the following described lands, being 4.23 acres, in Acadia Parish, Louisiana, and being Tract No. 13 shown on the plat:

Four acres, more or less, situated in Section 62, Township 8 South, Range 2 East, being bounded now or formerly as follows: Northwest by Bayou Wikoff; Southeast by heirs of Francois Thibodeaux; Northeast by J. Ovey Arceneaux and Southwest by Mervine Kahn Estate.

H-11-(d) Continental Lease No. 88832 from Waddy Arceneaux, as Lessor, to Clet LeBlanc et al, as Lessees, dated May 17, 1955, recorded under Entry No. 273212; and Lease from Mrs. Anna Lavergne Thibodeaux et al, as Lessors, to Clet LeBlanc, as Lessee, dated July 13, 1955, recorded under Entry No. 274532, Book W-14, Page 196, covering the following described land, being 4.23 acres, in Arcadia Parish, Louisina, and being Tract No. 13 shown on the plat:

A certain tract or parcel of land containing five (5) arpents, more or less, situated in Acadia Parish, Louisiana, further described as being in Section 62, Township 8 South, Range 2 East, Louisiana Meridian, bounded now or formerly on the Northwest by Bayou Wikoff, on the Southeast by lands of Francois Thibodeaux Estate, on the Northeast by lands of Ovey Arceneaux, and on the Southwest by lands of Bayou Wikoff.

H-11-(e) Continental Lease No. 88832 from Homer Richard et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated February 22, 1956, recorded under Entry No. 279831, Book H-15, Page 532; and

Lease from Regina Thibodeaux Matte et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated February. 23, 1956, recorded under Entry No. 279604, Book H-15, Page 22; and

Lease from Alida Thibodeaux Miller et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated Feb-

ruary 23, 1956, recorded under Entry No. 279605, Book H-15, Page 25; and

Lease from Eulice LeJeune, et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated February 23, 1956, recorded under Entry No. 279676, Book H-15, Page 186; and

Lease from Emathilde LeJeune Doucet et al, as Lessors, to Warren Petroleum Corpporation, as Lessee, dated February 22, 1956, recorded under Entry No. 279832, Book H-15, Page 534; and

Lease from Alicia Bellard, Curator, as Lessor, to Warren Petroleum Corporation, as Lessee, dated February 7, 1956, recorded under Entry No. 278772; and

Lease from Palmyre LeJeune Boudreaux, as Lessor, to Warren Petroleum Corporation, as Lessee, dated February 23, 1956, recorded under Entry No. 279950, Book I-15, Page 182; and

Lease from Nora Lee Venable Pommier et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated February 23, 1956, recorded under Entry No. 281930, Book Q-15, Page 90; and

Lease from Gervais J. Venable et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated February 23, 1956, recorded under Entry No. 281933, Book Q-15, Page 99; and

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Lease from Whitney Leger, as Lessor, to Warren Petroleum Corporation, as Lessee, dated June 12, 1956, recorded under Entry No. 281929, Book Q-15, Page 88; and

Lease from Ernest Savoy et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated February 23, 1956, recorded under Entry No. 281932, Book Q-15, Page 96; and

Lease from Sulice Leger et al, as Lessor, to Warren Petroleum Corporation, as Lessee, dated February 22, 1956, recorded under Entry No. 281931, Book Q-15, Page 93; and

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Lease from Alzena Leger Miller et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated February 23, 1956, recorded under Entry No. 281934, Book Q-15, Page 102; and

Lease from Armance Thibodeaux Mouton et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated February 28, 1956, recorded under Entry No. 282289, Book R-15, Page 810; and

Lease from Jessie Savoy, as Lessor, to Warren Petroleum Corporation, as Lessee, dated June 13, 1956, recorded under Entry No. 282351, Book R-15, Page 370; and

Lease from Amire LeJeune Jacobs, as Lessor, to Warren Petroleum Corporation, as Lessee, dated July 31, 1956, recorded under Entry No. 283223, Book U-15, Page 210; and

Lease from Lodis Thibodeaux, as Lessor, to Warren Petroleum Corporation, as Lessee, dated August 1, 1956, recorded under Entry No. 283222, Book U-15, Page 208; and

Lease from Irene Leger LeGros, as Lessor, to Warren Petroleum Corporation as Lessee, dated August 7, 1956, recorded under Entry No. 283570, Book V-15, Page 249; and

Lease from Anna Thibodeaux Hereford, as Lessor, to Warren Petroleum Corporation, as Lessee, dated August 20, 1956, recorded under Entry No. 283851, Book W-15, Page 266; and

Lease from Albert F. Thibodeaux, as Lessor, to Warren Petroleum Corporation, as Lessee, dated October 23, 1956, recorded under Entry No. 284746, Book Z-15, Page 713, which leases described under H-11-(c)-(e) incl., covers the following described land, in Acadia Parish, Louisiana, being 4.23 acres, and being Tract No. 13 shown on the plat:

> 4.23 acres, more or less, situated in Section 62 of Township 8 South, Range 2 East, and being bounded now or formerly as follows: Northwesterly by Bayou Wikoff, Northeasterly by J. Ovey Arceaux, Southeast-

erly the heirs of Elizabeth Thiboodeaux Duplechain and Southwesterly by Mervine Kahn Estate.

H-12. Continental lease No. 88832 from Leo E. Kahn et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated July 15, 1955, recorded under Entry No. 275429) Book S-14, Page 340, covering the following described lands, being 8.46 acres, in Acadia Parish, Louisiana, and being Tract No. 17 shown on the plat:

Eight (8) acres of land, more or less, situated in Section 62 of Township 8 South, Range 2 East, and Section 46 of Township 9 South, Range 2 East, and being bounded now or formerly as follows: Northwest by Bayou Wikoff and Roy Regnaud et al,

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Northeast by Isaac Melancon and Southeast by Isaac Melancon and Southwest by Ovey Arceneaux and Lucien Meche et al, and being the property acquired by Mervine Kahn from Joseph Melancon by Act No. 66873, recorded in Conveyance Book V-3, Page 206, records of Acadia Parish, Louisiana.

H-13. Continental lease No. 88834 from Roy J. Begnaud et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated July 15, 1955, recorded under Entry No. 275676, Book T-14, Page 194, as amended by instrument dated December 27, 1955, recorded under Entry No. 281870 Book..... Page.....; and

Lease from Emela Thibodeaux Savoy et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated November 28, 1955, recorded under Entry No. 277865, Book A-15, Page 401, covering the following described lands, being 4.23 acres, in Acadia Parish, Louisiana, and being Tract No. 16 shown on the plat:

4.23 acres of land, more or less, situated in Section 62, Township 8 South, Range 2 East and Section 46, Township 9 South, Range 2 East, and being bounded now or formerly as follows: On the Northwest by land of Noah Stelly, on the Northeast by land of J. Ovey Arceneaux and Isaac Melancon, on the Southeast by Isaac Melancon and Southwest by Isaac Melancon and Mervine Kahn Estate.

H-14. Continental lease No. 88835 from Lucien Meche et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated June 28, 1955, recorded under Entry No. 274719, Book P-14, Page 683; and

Lease from Elie LeBlanc et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated June 28, 1955, recorded under Entry No. 274721, Book P-14, Page 691; and

Lease from Elodie Meche et al, as Lessors, to Warren Petroleum Corporation, as Lessee, dated October 25, 1955, recorded under Entry No. 276652, Book W-14, Page 208; and

Lease from Clarence Trahan, as Lessor, to Warren Petroleum Corporation, as Lessee, dated January 2, 1957, recorded under Entry No. 291016, Book X-16, Page 15, covering the following described land, being 8.46 acres, in Acadia Parish, Louisiana, and being Tract No. 18 shown on the plat:

Eight (8) acres of land, more or less, situated in Section 62, Township 8 South, Range 2 East, and Section 46, Township 9 South, Range 2 East, and being bounded now or formerly as follows: On the Northeast by lands of Mervine Kahn Company and Isaac Melancon, on the Southeast by lands of Ovey Arceneaux, on the Southwest by lands of Isaac Melancon and on the Northwest by E. Miller Estate and Bayou Wikoff, and being the 10 arpent tract of land inherited by lessors

(and or their ascendants) from Cypien Meche and Margaret Smith Meche.

H-15. Sun Lease No. 59200, dated April 1, 1952, between Noah Stelly, as Lessor, and Albert D. Miller, as Lessee recorded under Entry No. 252073, Book N-11, Page 402, covering the following described lands, being 4.23 acres, in Acadia Parish, Louisiana, and being Tract No. 15 shown on the plat:

A certain tract of land containing 4 acres, more or less, located in Section 62, Township 8 South, Range 2 East, Acadia Parish, Louisiana, bounded as follows,

to-wit: Northeast by Ovey Arceneaux; Southeast by Roy J. Begnaud et al; Southwest by Mervine Kahn Estate; Northwest by Francois Thibodeaux Estate.

H-16. Sun Lease No. 60001, dated November 5, 1952, between J. Ovey Arceneaux et al, as Lessor, and Henry T. Duson, as Lessee, recorded under Entry No. 255716, Book Z-11, Page 424, covering the following described lands, being 52.75 acres, in Acadia Parish, Louisiana, and being Tracts Nos. 19, 20 and 21 shown on the plat:

Twenty (20) acres, more or less, situated in Section Forty-six (46), Township Nine (9) South, Range Two (2) East, Louisiana Meridian, bounded now or formerly as follows: On the Northwest by lands of Mervine Kahn Company; on the Northeast by land of Isaac Melancon; on the Southeast by land of Isaac Melancon; and on the Southwest by land of Isaac Melancon.

Fifteen (15) acres, more or less, situated in Section Forty-six (46), Township Nine (9) South, Range Two

(2) East, Louisiana Meridian, bounded now or formerly as follows: On the Northwest by land of Isaac Melancon; on the Northeast by land of Emile Navarre and Mrs. B. Seaux; on the Southeast by land of Mrs. B. Seaux and of Felix J. Castille; and on the Southwest by land of Mrs. B. Seaux and of Isaac Melancon.

Eight (8) acres, more or less, situated in Section Sixty-two (62), Township (8) South, Range Two (2) East, Louisiana Meridian, bounded now or formerly as follows: On the Northwest by Bayou Wikoff; on the Northeast by land of Emile Navarre; on the Southeast by land of Isaac Melancon, and on the Southwest by land of Roy J. Begnaud et al, Noah Stelly, Francois Thibodeaux and Waddy Arceneaux.

All recording references for the above instruments are to the Conveyance Records of Acadia Parish, Louisiana.

Operating agreements have been entered into that cover and effect certain of the tracts herein described, in addition to operating agreements referred to earlier in this Exhibit "A", as follows:

1. C-7771 — Operating agreement dated June 11, 1953, between Continental Oil Company, Sun Oil Company, M. H. Marr, and General Crude Oil Company for all horizons covering 2700 acres, more or less, in Sections 1, 12, 11, 46, 3, 47, 4, 48 and 20, all in Township 9 South, Range 2 East, Acadia Parish, Louisiana; and amendment thereto dated February 9, 1956 executed by Continental Oil Company et al.

2. C-8919-D — Operating agreement dated August 27, 1956, for Homeseekers "E" Unit No. 2 as formed by Department of Conservation Order No. 307-A.

3. C-8919-A — Operating agreement, dated June 14, 1956, for Homeseekers "E" Unit No. 3 as formed by Depwartment of Conservation Order No. 307-A.

4. C-8919-C — Operating agreement, dated June 14, 1956, for Homeseekers "E" Unit No. 4 as formed by Department of Conservation Order No. 307-A.

5. C-8919-B — Operating agreement, dated June 26, 1956, for Homeseekers "E" Unit No. 5 as formed by Department of Conservation Order No. 307-A.

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6. C-8598-F — Operating agreement, dated January 3, 1956, and amended by an amendment dated April 8, 1957, for Nodosaria "A" Unit No. 2 as formed by Department of Conservation Order No. 307-b.

7. C-8598-D — Operating agreement, dated December 21, 1955, and amended by an amendment dated April 8, 1957, for Nodosaria "A" Unit No. 3 as formed by Department of Conservation Order No. 307-b.

8. C-8598-B — Operating agreement, dated February 13, 1956, and amended by an amendment dated April 8, 1957, and amended by an amendment dated April 2, 1958, for Nodosaria "A" Unit No. 4 as formed by Department of Conservation Order No. 307-b.

9. C-8598-E — Operating agrement, dated January 13, 1956, and amended by an amendment dated April 8, 1957, for Nodosaria "A" Unit No. 5 as formed by Department of Conservation Order No. 307-b.

10. C-8598-C — Operating agreement, dated February 13, 1956, and amended by an amendment dated April 8, 1957, for Nodosaria "A" Unit No. 6 as formed by Department of Conservation Order No. 307-b.

11. C-8598-G — Operating agreement dated May 23, 1956, and amended by an amendment dated April 8, 1957, for Nodosaria "A" Unit No. 7 as formed by Department of Conservation Order No. 307-b.

12. C-8598-A — Operating agreement, dated and effective October 1, 1956, for Nodosaria "A" Unit No. 8 as formed by Department of Conservation Order No. 307-b.

13. C-8498-H — Operating agreement, dated April 1, 1957, for Nodosaria "A" Unit No. 11, as formed by Department of Conservation Order No. 307-b.

Insofar as the Operating Agreements affect lease hold interests assigned and conveyed to Grantee, Grantee has acquired all rights and obligations of Grantors thereunder, and Grantors agree that they are not to receive any notices or information that may be provided or required under the terms and provisions of such agreements.

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To be used to substitute as sheet B

WARREN PETROLEUM CORP.
NORTH RAYNE AREA
ACADIA PARISH, LA.

SCALE : 1"=600'

OCT. 1, 1955

LETZ ENGINEERS
Paul J. Letz, C.E.
LICENSE NO. 580

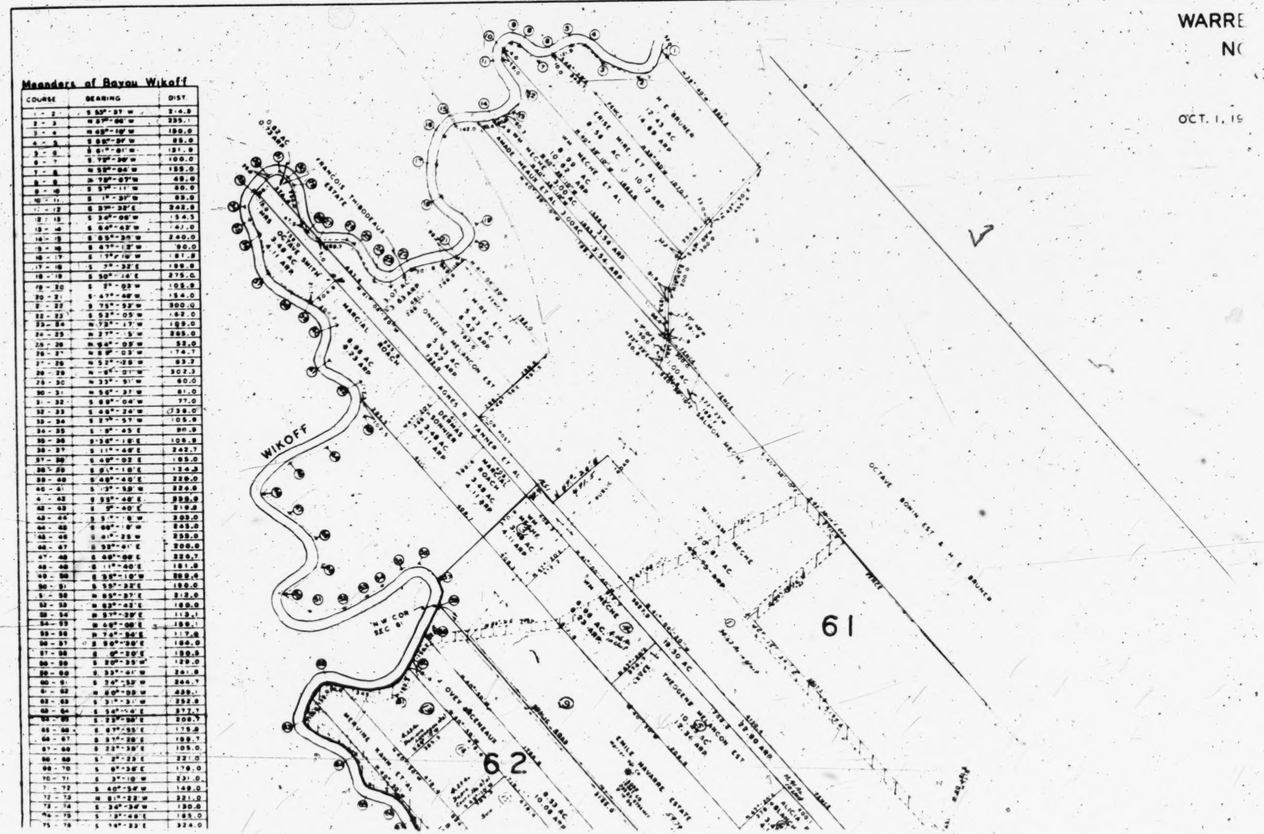
HEREBY CERTIFIES THAT THIS PLAT IS A TRUE AND CORRECT PLAT OF A SURVEY MADE BY ME ON THE GROUND Paul J. Letz

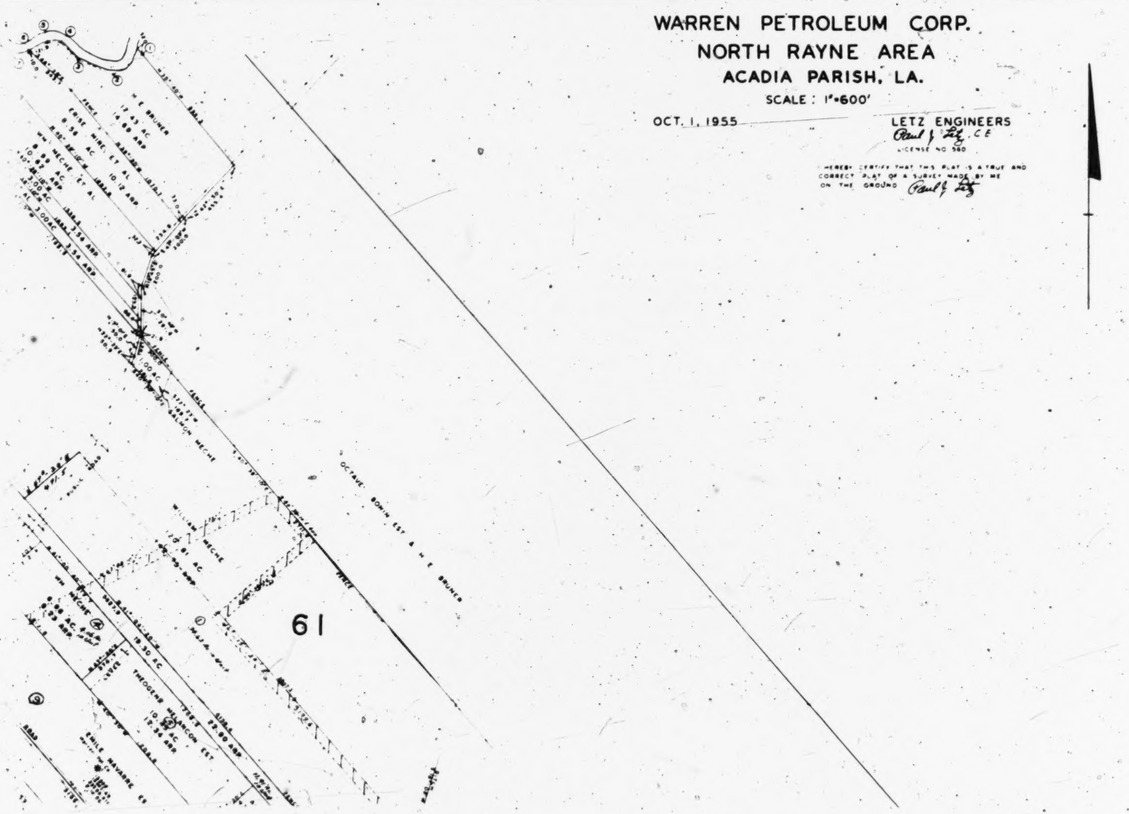
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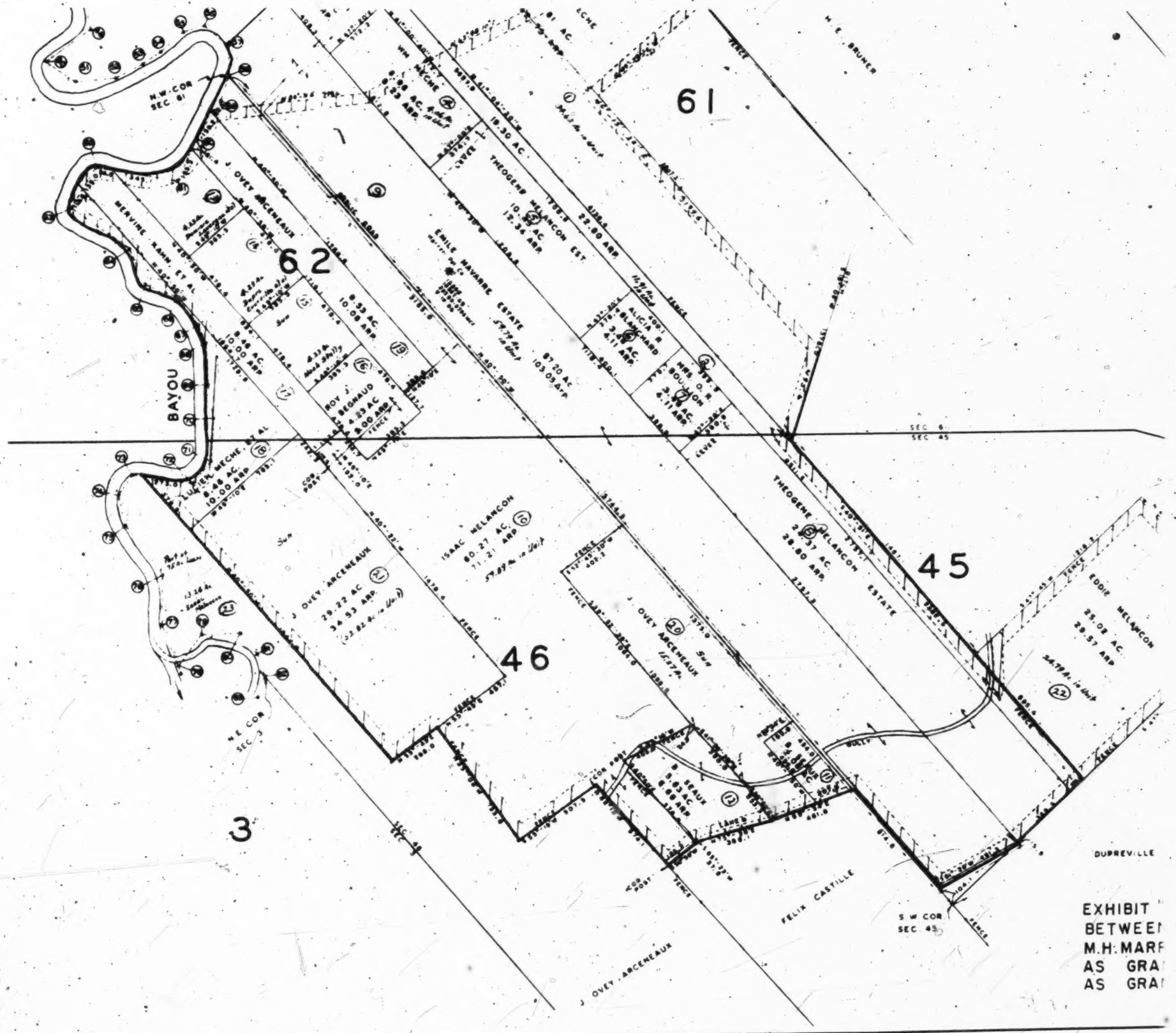
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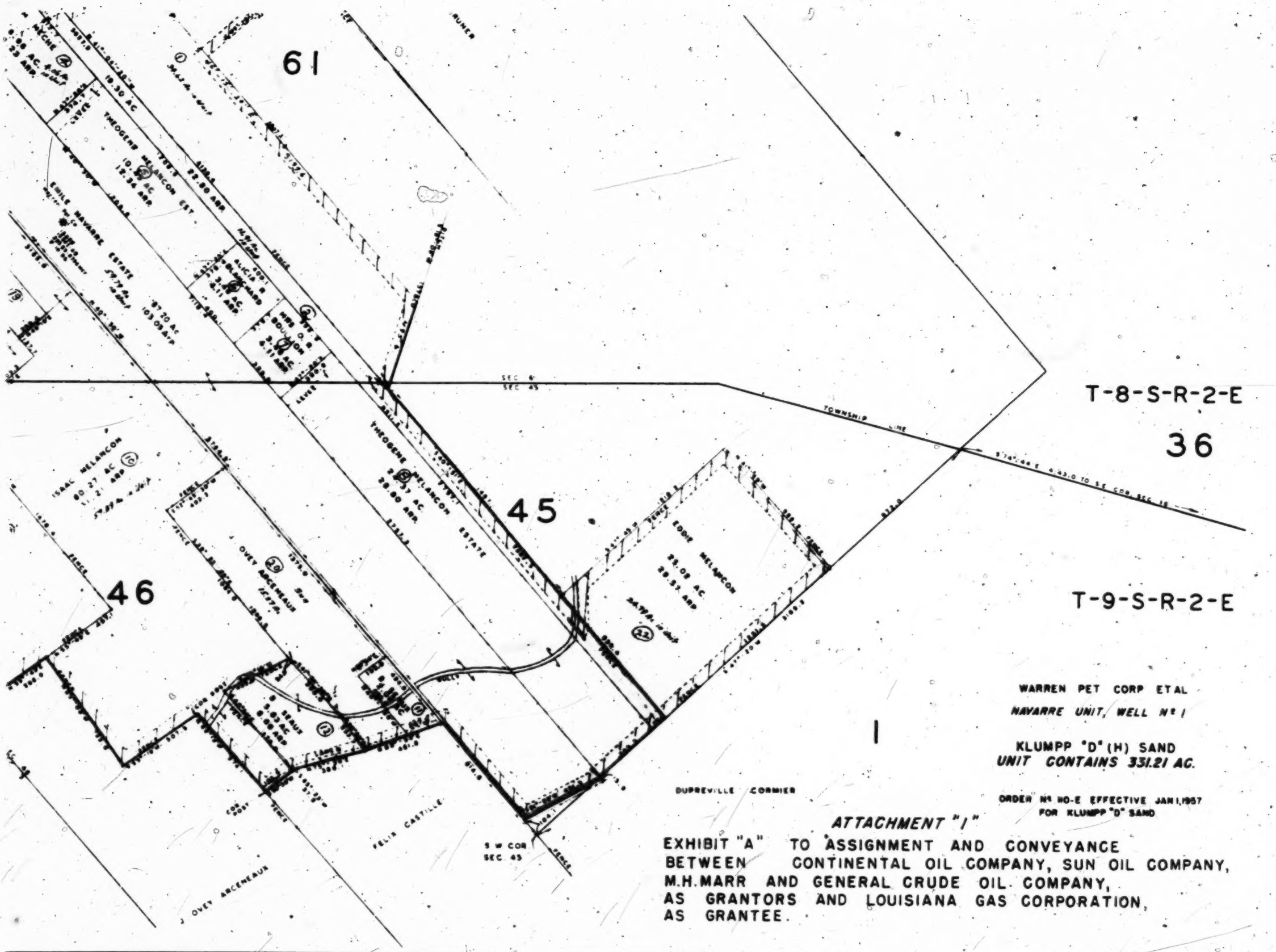
COURSE	BEARING	DIST
1 - 2	S 59°-37' W	214.0
2 - 3	N 87°-08' W	335.1
3 - 4	N 69°-19' W	198.0
4 - 5	S 88°-29' W	85.0
5 - 6	S 81°-01' W	121.0
6 - 7	S 77°-28' W	100.0
7 - 8	N 59°-06' W	159.0
8 - 9	S 39°-07' W	49.0
9 - 10	S 11°-11' W	60.0
10 - 11	S 19°-39' E	89.0
11 - 12	S 39°-32' E	240.0
12 - 13	S 48°-08' W	154.3
13 - 14	S 64°-49' W	141.0
14 - 15	S 85°-36' W	240.0
15 - 16	N 67°-12' W	90.0
16 - 17	S 77°-19' W	121.0
17 - 18	S 79°-32' E	109.0
18 - 19	S 86°-27' E	275.0
19 - 20	S 71°-03' W	105.0
20 - 21	S 47°-48' W	154.0
21 - 22	S 32°-52' W	300.0
22 - 23	S 53°-05' W	62.0
23 - 24	S 73°-17' W	139.0
24 - 25	N 77°-13' W	235.0
25 - 26	N 84°-03' W	93.0
26 - 27	N 69°-03' W	79.7
27 - 28	N 52°-08' W	93.3
28 - 29	N 33°-51' W	302.3
29 - 30	N 33°-51' W	80.0
30 - 31	N 58°-21' W	81.0
31 - 32	S 68°-06' W	91.0
32 - 33	S 48°-24' W	730.0
33 - 34	S 29°-57' W	105.0
34 - 35	S 7°-43' E	80.0
35 - 36	S 25°-18' E	109.0
36 - 37	S 11°-46' E	242.7
37 - 38	S 19°-02' E	193.0
38 - 39	S 31°-01' E	134.0
39 - 40	S 49°-46' E	259.0
40 - 41	S 73°-58' E	226.0
41 - 42	S 53°-16' E	230.0
42 - 43	S 7°-40' E	219.0
43 - 44	S 3°-11' W	233.0
44 - 45	S 68°-11' W	245.0
45 - 46	S 49°-28' W	255.0
46 - 47	S 32°-01' E	206.0
47 - 48	S 68°-09' E	225.7
48 - 49	S 11°-46' E	181.0
49 - 50	S 32°-10' W	252.0
50 - 51	S 19°-32' E	180.0
51 - 52	S 8°-27' E	224.0
52 - 53	S 63°-42' E	118.0
53 - 54	S 25°-39' E	230.0
54 - 55	S 8°-08' E	117.0
55 - 56	S 26°-28' E	196.0
56 - 57	S 39°-32' E	188.0
57 - 58	S 7°-28' E	189.0
58 - 59	S 22°-33' W	188.0
59 - 60	S 33°-11' W	241.0
60 - 61	S 7°-28' E	217.0
61 - 62	S 39°-32' E	208.0
62 - 63	S 6°-35' E	178.0
63 - 64	S 6°-35' E	195.0
64 - 65	S 6°-23' E	221.0
65 - 66	S 6°-23' E	179.0
66 - 67	S 6°-10' W	221.0
67 - 68	S 60°-56' W	148.0
68 - 69	S 83°-56' W	221.0
69 - 70	S 69°-44' W	230.0
70 - 71	S 19°-44' E	185.0
71 - 72	S 19°-33' E	324.0





47 - 48	S 40°-08'E	338.7
48 - 49	S 11°-40'E	181.8
49 - 50	E 35°-10'W	288.6
50 - 51	S 55°-32'E	190.0
51 - 52	N 85°-37'E	212.0
52 - 53	N 83°-42'E	100.0
53 - 54	N 57°-20'E	113.1
54 - 55	N 40°-08'E	159.1
55 - 56	N 74°-24'E	117.8
56 - 57	S 50°-38'E	104.8
57 - 58	E 0°-20'E	130.3
58 - 59	S 20°-35'W	128.0
59 - 60	S 33°-41'W	241.8
60 - 61	S 24°-52'W	244.7
61 - 62	N 80°-03'W	438.1
62 - 63	S 31°-31'W	252.8
63 - 64	S 56°-14'E	377.7
64 - 65	S 23°-58'E	200.7
65 - 66	S 67°-55'E	175.8
66 - 67	S 37°-28'E	189.7
67 - 68	S 22°-38'E	105.0
68 - 69	S 2°-23'E	221.0
69 - 70	S 8°-36'E	178.0
70 - 71	S 3°-10'W	231.0
71 - 72	S 40°-54'W	148.0
72 - 73	N 81°-22'W	321.0
73 - 74	S 36°-36'W	130.0
74 - 75	S 13°-46'E	165.0
75 - 76	S 38°-23'E	324.0
76 - 77	S 0°-57'W	269.0
77 - 78	S 21°-19'E	233.0
78 - 79	N 36°-57'E	208.0
79 - 80	N 88°-38'E	207.0
80 - 81	S 37°-50'E	143.0
81 - 82	S 17°-09'E	134.8
82 - 83	S 18°-37'W	110.0





WARREN PET CORP ET AL

NAVARRE UNIT, WELL Nº 1

KLUMPP "D" (H) SAND
UNIT CONTAINS 331.21 AC.

ORDER Nº NO-E EFFECTIVE JAN 1, 1957
FOR KLUMPP "D" SAND

ATTACHMENT "1"

EXHIBIT "A" TO ASSIGNMENT AND CONVEYANCE BETWEEN CONTINENTAL OIL COMPANY, SUN OIL COMPANY, M.H. MARR AND GENERAL CRUDE OIL COMPANY, AS GRANTORS AND LOUISIANA GAS CORPORATION, AS GRANTEE.

A2701

EXHIBIT "B"
TO
ASSIGNMENT AND CONVEYANCE
RAYNE FIELD
ACADIA PARISH, LOUISIANA
BETWEEN
CONTINENTAL OIL COMPANY ET AL,
AS GRANTORS
AND
LOUISIANA GAS CORPORATION, AS GRANTEE
DATED ....., 1959

Each month from the proceeds from the sale during such month of 100% of the natural gas liquids produced by the processing plant and attributable to the leasehold interests covered by the Assignment and Conveyance there shall be deducted an amount equal to the sum of the following:

1. The appropriate amount from Table I below plus the appropriate amount from Table II below; plus the amount paid during the month for plant fuel; less $4,590 per month for each of the first 60 months of plant operation; and
2. All taxes (except State, Federal and other governmental income, excess profits, capital stock, and corporate franchise taxes and taxes of a similar nature or equivalent in effect) borne by such natural gas liquids or applicable to the proceeds from the sale of such natural gas liquids during such month to the extent that such taxes are not chargeable to others; and
3. All amounts payable to owners of royalties and overriding royalties applicable to said leasehold interests with regard to the proceeds from the sale of such natural gas liquids.

The remainder of such proceeds shall be the amount to be paid to Grantors as the owners of the production payment. In making computations for application in Tables I and II all such results shall be rounded off to the nearest full unit of money or quantity set forth in such tables.

A2702

TABLE "I"

PER CENT TO GRANTEE OF DOLLAR VALUE OF PROPANE AND BUTANE COMPONENTS OF P.B.C. PRODUCED IN GAS PROCESSING PLANT

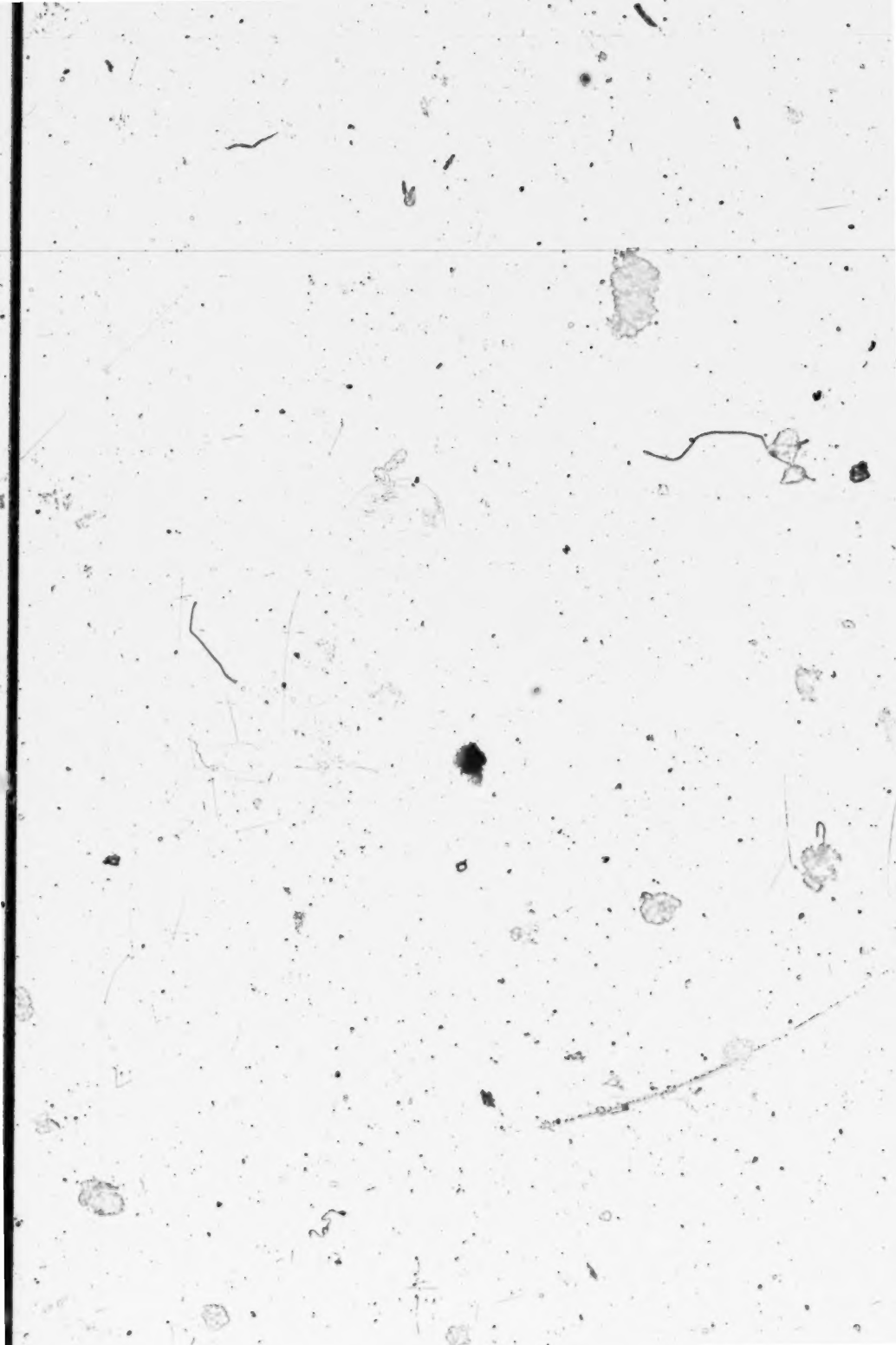
Daily Average Dollar Value of Propane and Butane	*Per Cent of Daily Average Dollar Value to Grantee*
Over $9,000	21.1%
8,750 but not over 9,000	21.6%
8,400 but not over 8,749	21.8%
8,050 but not over 8,399	22.3%
7,700 but not over 8,049	22.9%
7,350 but not over 7,699	23.5%
7,000 but not over 7,349	24.2%
6,650 but not over 6,999	25.0%
6,300 but not over 6,649	25.7%
5,825 but not over 6,299	26.7%
5,360 but not over 5,824	28.3%
4,910 but not over 5,359	30.2%
4,480 but not over 4,909	32.3%
4,060 but not over 4,479	34.7%

Daily Average Dollar Value of Propane and Butane	*Per Cent of Daily Average Dollar Value to Grantee*
3,660 but not over 4,059	37.6%
3,275 but not over 3,659	40.9%
2,900 but not over 3,274	44.8%
2,540 but not over 2,899	49.7%
2,200 but not over 2,539	55.7%
Less than 2,200	63.0%

The amount from this Table I shall be determined as follows:

The percentage of propane and butane (iso and normal) in the weighted average composition of the P.B.C. stream for each month determined by analysis shall be multiplied by the total volume of the P.B.C. stream sold to determine the individual volumes of propane and butane (iso and normal) contained in the P.B.C. stream for such month. The value of the propane and butane (iso and normal) components shall be obtained by multiplying the respective calculated volumes of propane and butane (iso and normal) by that portion of the sales price received by Grantee for each such component. The sum of the values of the propane and butane (iso and normal) components of the P. B. C. stream for such month shall be divided by the number of days in such month, and the result will be the "Daily Average Dollar Value of Propane and Butane" for such month to be applied in this Table I. The amount to Grantee from this Table I shall be the product obtained by multiplying the applicable percentage times the "Daily Average Value of Propane and Butane" times the number of days in such month. In the event of a sale of the high ethane content stream, being that gaseous hydrocarbon stream issuing

from the de-ethanizer reflux accumulator after refluxing of the de-ethanizer tower, or the equivalent of the de-ethanizer tower, the daily average value of the high ethane content stream will be added to the "Daily Average Dollar Value of Propane and Butane" for the purpose of determining the amount due Grantee. The daily average value of the high ethane content stream as used herein shall equal the quotient obtained by dividing the gross income for the month from the sale of such stream, less the money value of the BTU equivalent at the price then being paid for plant fuel, by the number of days in the month.



A2703

TABLE II

PER CENT OF THEORETICAL DOLLAR VALUE OF SEPARATOR LIQUIDS TO GRANTEE

Average Daily Value Per Barrel of Separator Liquids	Average Daily Theoretical Volume of Separator Liquids in Barrels												
$/BBL	10,000 or Greater	9,500 to 9,999	9,000 to 9,499	8,500 to 8,999	8,000 to 8,499	7,500 to 7,999	7,000 to 7,499	6,500 to 6,999	6,000 to 6,499	5,500 to 5,999	5,000 to 5,499	4,500 to 4,999	Less Than 4,500
3.35 Or Greater	2.81	2.94	3.08	3.23	3.40	3.58	3.80	4.05	4.34	4.68	5.08	5.57	6.20
3.25-3.34	2.81	2.94	3.09	3.24	3.41	3.59	3.81	4.05	4.34	4.68	5.08	5.57	6.20
3.15-3.24	2.83	2.96	3.10	3.25	3.41	3.60	3.81	4.05	4.34	4.68	5.08	5.57	6.20
3.05-3.14	2.86	2.98	3.13	3.28	3.44	3.63	3.84	4.08	4.37	4.71	5.11	5.61	6.23
2.95-3.04	2.88	3.01	3.16	3.31	3.47	3.	3.87	4.12	4.41	4.75	5.15	5.65	6.27
2.85-2.94	2.92	3.06	3.21	3.36	3.53	3.72	3.93	4.18	4.47	4.82	5.23	5.73	6.36
2.75-2.84	2.98	3.11	3.26	3.42	3.59	3.78	4.00	4.25	4.56	4.92	5.34	5.86	6.50
2.65-2.74	3.05	3.18	3.34	3.50	3.68	3.87	4.10	4.35	4.67	5.04	5.47	6.00	6.67
2.55-2.64	3.15	3.28	3.44	3.60	3.77	3.97	4.21	4.48	4.79	5.16	5.61	6.17	6.86
2.45-2.54	3.25	3.40	3.56	3.72	3.90	4.10	4.35	4.63	4.95	5.34	5.80	6.38	7.09
Less than 2.45	3.37	3.52	3.69	3.85	4.04	4.26	4.52	4.82	5.14	5.55	6.02	6.63	7.37

The amount from this Table II shall be determined by multiplying the "Theoretical Volume of Separator Liquids" during the calendar month, as defined in Subparagraph (b) below, by the "Average Daily Value Per Barrel of Separator Liquids" during the calendar month, as defined in Subparagraph (a) below, and then multiplying that product by the proper percentage figure from this Table II.

The row and column in this Table II to be used in obtaining the proper percentage therefrom shall be determined by the computation provided in Subparagraphs (a) and (c) below:

(a) The "Average Daily Value Per Barrel of Separator Liquids" shall be computed by dividing the gross amount received by Grantee from the sale of separator liquids during the calendar month by the total number of barrels of separator liquids produced and sold during the calendar month.

(b) The "Theoretical Volume of Separator Liquids" shall be computed by multiplying the total volume of residue gas delivered from the gas processing plant during the calendar month, in millions of cubic feet, by an assumed separator liquid content of 60 barrels per million cubic feet.

(c) The "Average Daily Theoretical Volume of Separator Liquids in Barrels" shall be computed by dividing the "Theoretical Volume of Separator Liquids" by the number of days in the calendar month.

A2704

Texas Eastern Transmission Corp.
Exhibit No. M-14, Docket No. G-12446, Exhibit II

CONVEYANCE

IN CONSIDERATION of good and valuable cash consideration in hand paid, the adequacy and receipt of which is hereby acknowledged, Louisiana Gas Corporation, a Delaware corporation (herein called "Grantor"), does hereby transfer, assign and convey with full warranty of title unto Texas Eastern Transmission Corporation, a Delaware corporation (herein called "Grantee"), its successors and assigns, the leasehold rights, wells, equipment and all other properties and interests of every kind and character described in and covered by that certain "Assignment and Conveyance" from Continental Oil Company, Sun Oil Company, M. H. Marr and General Crude Oil Company (herein called "Continental et al") to Grantor of even date herewith, which Assignment and Conveyance is attached to this instrument as Exhibit "1," subject, however, to the remaining term and provisions hereof.

The properties and interests conveyed hereby are subject to the following;

(a) The reservations, terms and provisions of the Assignment and Conveyance attached hereto and marked Exhibit "1"; and

(b) Those certain Acts of Mortgage and Pledge of even date herewith covering the properties and interests hereby conveyed, executed by Grantor to secure Continental et al in the payment of certain promissory notes therein described;

and by the execution hereof Grantee acknowledges that the properties and interests hereby conveyed are subject to the foregoing, it being expressly stipulated and agreed

that the promissory notes (representing the credit portion of the purchase price for the acquisition by Grantor from Continental et al of the properties covered by the Assignment and Conveyance), the Acts of Mortgage and Pledge securing the payment thereof and the vendor's lien and privilege of Continental et al will continue as burdens on such properties and interests conveyed hereby until the notes are paid in full; provided, however, that Grantee does not assume any personal liability on said notes or agree to pay any deficiencies in the event of foreclosure.

As required by the said Assignment and Conveyance, it is expressly provided that:

(1) Prior to the time the credit portion of the purchase price for the leasehold rights assigned and conveyed herein is paid in full, the placing of a mortgage, lien or encumbrance is prohibited unless a copy of the proposed mortgage, lien or encumbrance has been furnished to Continental et al and the written approval of Continental et al to such proposed mortgage, lien or encumbrance has been given.

(2) Any assignment or transfer of an interest of Grantee acquired hereunder is expressly prohibited and shall be null and void, unless at least thirty (30) days prior to the closing date of the proposed transfer Continental et al are advised in writing of the name of the proposed purchaser with proof that the sale can be completed and furnished copies of all instruments to be completed with detailed information as to the purchase price and method of payment, in the manner

and to the addresses applicable pursuant to the provisions of said Assignment and Conveyance. Continental et al shall have the preferential right and

option to purchase and acquire such interest, in the proportions of:

Continental Oil Company	55.930697%
Sun Oil Company	31.669095%
M. H. Marr	8.404469%
General Crude Oil Company	3.995739%

or in such proportions as any one or more, but less than all, of the parties may elect to acquire such interest, for the consideration and upon the same terms and conditions as that proposed. Unless Continental et al notify Grantee that they, or any one or more of them, for the full interest to be transferred, exercise their preferential option to purchase within fifteen (15) days after receipt of the notice of the proposed sale, the option as to such proposed sale shall be terminated.

A transfer by Grantee, and any subsequent transfer, shall include a provision prohibiting (until the credit portion of the purchase price is paid in full) the placing of a mortgage, lien, or encumbrance on the leasehold interest without the prior approval by Continental et al thereof, and that Continental et al shall have preferential right to purchase from such purchaser, identical with that reserved in the Assignment and Conveyance; and it shall contain a recognition of the vendor's lien and privilege of Continental et al to secure the unpaid portion of the purchase price for the leasehold rights assigned and conveyed to Grantor (which unpaid portion of the purchase price and amount secured by the vendor's lien and privilege of Continental et al on the said leasehold rights on the date of this Conveyance is $121,975,200) and the fifteen (15) day period that Continental et al have to exercise their preferential right to purchase shall not commence to run unless and until the instruments presented contain such provi-

sions. The preferential right to purchase shall not apply in case of a merger, consolidation, transfer to a subsidiary or parent corporation, or any involuntary transfer thereof required by law where Grantee cannot legally meet the requirements of this paragraph, provided that Grantee shall give Continental et al notice (as provided in the Assignment and Conveyance) immediately after is it informed by proceedings or order that such involuntary transfer may be or is required; however, all such transfers shall contain provisions preserving the preferential right of Continental et al to purchase. A transfer by Grantee, or by any subsequent owner, to Louisiana Gas Corporation shall be deemed a transfer to which said preferential right of purchase is applicable.

IN TESTIMONY WHEREOF this instrument has been executed by Grantor and Grantee in multiple originals as of the ..... day of ....., 1958.

LOUISIANA GAS CORPORATION

By .....
President

TEXAS EASTERN TRANSMISSION CORPORATION

By .....
Vice President

WITNESSES:

.....

.....

.....

.....

A2706

State of Texas
County of Harris

On this ..... day of ....., 1959, before me, a Notary Public, appeared ....., to me personally known, who being by me duly sworn, did say that he is President of Louisiana Gas Corporation, a corporation, and that the foregoing instrument was signed on behalf of the said corporation by authority of its Board of Directors, and the said ..... acknowledged said instrument to be the free act and deed of said corporation.

Witness my official signature and seal as such Notary Public on the day, month and year first above written.

.....
Notary Public in and for
Harris County, Texas

State of Texas
County of Harris

On this ..... day of ....., 1959, before me, a Notary Public, appeared ....., to me personally known, who being by me duly sworn, did say that he is Vice President of Texas Eastern Transmission Corporation, a corporation, and that the foregoing instrument was assigned o nbehalf of the said corporation by authority of its Board of Directors, and the said ..... acknowledged said instrument to be the free act and deed of said corporation.

Witness my official signature and seal as such Notary Public on the day, month and year first above written.

.....
Notary Public in and for
Harris County, Texas

Hearing Exhibit No. M-20

ACT OF MORTGAGE AND PLEDGE

State of Texas
County of Harris

Be it known that before me, a Notary Public duly commissioned and qualified in and for the State of Texas and County of Harris and therein residing, and in the presence of witnesses hereinafter named, on the ..... day of ....., 1959, personally came and appeared:

Louisiana Gas Corporation, a Delaware corporation, represented by Campbell A. Griffin, its President, duly authorized (herein called "Mortgagor"), which declared that it is justly and truly indebted unto:

M. H. Marr, (herein called "Mortgagee") in the full and true principal sum of Ten Million, Two Hundred Fifty-One Thousand, Three Hundred Ninety-Two Dollars ($10,251,392.00), and in order to evidence said indebtedness Mortgagor has made, executed and delivered a series of promissory notes, aggregating the total sum of $10,251,392.00, consisting of sixteen notes, numbered consecutively 1 through 16, each dated of even date herewith, without interest from date to maturity, each note being payable in consecutive monthly installments as follows:

Note 1 is in the principal sum of $528,120.00, the first of twelve equal installments thereon being due on the first day of ....., 1959.

Note 2 is in the principal sum of $528,120.00, the first of twelve equal installments thereon being due on the first day of ....., 1960.

Note 3 is in the principal su mof $672,816.00, the first of twelve equal installments thereon being due on the first day of ....., 1961.

Note 4 is in the principal sum of $672,816.00, the first of twelve equal installments thereon being due on the first day of ....., 1962.

Note 5 is in the principal sum of $672,816.00, the first of twelve equal installments thereon being due on the first day of ....., 1963.

Note 6 is in the principal sum of $672,816.00, the first of twelve equal installments thereon being due on the first day of ....., 1964.

Note 7 is in the principal sum of $672,816.00, the first of twelve equal installments thereon being due on the first day of ....., 1965.

Note 8 is in the principal sum of $672,816.00, the first of twelve equal installments thereon being due on the first day of ....., 1966.

Note 9 is in the principal sum of $672,816.00, the first of twelve equal installments thereon being due on the first day of ....., 1967.

Note 10 is in the principal sum of $672,816.00, the first of twelve equal installments thereon being due on the first day of ....., 1968.

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Note 11 is in the principal sum of $672,816.00, the first of twelve equal installments thereon being due on the first day of ....., 1969.

Note 12 is in the principal sum of $672,816.00, the first of twelve equal installments thereon being due on the first day of ....., 1970.

Note 13 is in the principal sum of $672,816.00, the first of twelve equal installments thereon being due on the first day of ....., 1971.

Note 14 is in the principal sum of $672,816.00, the first of twelve equal installments thereon being due on the first day of ....., 1972.

Note 15 is in the principal sum of $672,816.00, the first of twelve equal installments thereon being due on the first day of ....., 1973.

Note 16 is in the principal sum of $448,544.00, the first of eight equal installments thereon being due on the first day of ....., 1974,

said notes being payable at the offices of M. H. Marr, 2500 Republic National Bank Building, Dallas, Texas, and containing provisions for acceleration and endorsement of credits as more fully set out in said notes.

Appearers declare that said notes represent the Mortgagee's share of the credit portion of the consideration of that certain sale dated the ..... day of ....., 1959, executed by Continental Oil Company, et al, to Louisiana Gas Corporation, assigning and conveying the properties hereinafter described, which said notes after having been duly paraphed "Ne Varietur" by me, Notary, for indentification with this Act, were delivered to the Mortgagee, who hereby acknowledges the receipt thereof.

And now, in order to secure the full due and punctual payment of the above described notes in principal, attorneys' fees and costs, and to secure the performance of all the provisions therein and herein contained, the said Mortgagor declares that it does by these presents specially mortgage, pledge and hypothecate unto and in favor of the said Mortgagee, his heirs, legal representatives and assigns, or any future holder or holders of said notes, an undivided 8.404469% interest in and to the properties, rights and interests acquired by Mortgagor under the Assignment and Conveyance annexed hereto as Exhibit 1, including Exhibit A annexed thereto and in the machinery, equipment, fittings and other property described on Ex-

hibit 2 annexed hereto, all made a part hereof as if said exhibits were set out in full (which undivided interest is herein called "mortgaged properties"). Mortgagor warrants that it has not heretofore alienated or encumbered the mortgaged properties, but otherwise Mortgagor executes this mortgage and pledge without warranty of title and without any recourse against Mortgagor by reason of any failure of Mortgagor's title to all or any portion of the mortgaged properties.

It is the intention of the Mortgagor to include herein an undivided 8.404469% of all interest whatsoever owned by it in and to, or relating to any and all oil and gas leases covering the described land and units, or any of them, and other properties described in Exhibits 1 and 2, whether or not the said interests or the said lands, or other properties, are correctly described in said Exhibits. Moortgagor covenants that it will, from time to time, upon request, duly execute, acknowledge, deliver, record and file all such further and additional acts, deeds, instruments and assurances and will take all such further action as may be necessary or appropriate for assuring and confirming to the Mortgagee

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and in favor of any and all future holder or holders of the notes hereinabove described, and property included or intended to be included by the above descriptions and the lien, security, mortgage and pledge and assignment hereby created and intended to be created.

Mortgagor binds and obligates itself, in case any of said notes should be placed in the hands of an attorney to recover the amount thereof, or any part thereof, or to protect the interest of the holders thereof, or in case the same should be placed in the hands of an attorney for collection, compromise or other action, to pay all attorney's fees incurred thereby, as provided in the notes.

The mortgaged properties are to remain specially mortgaged, pledged and hypothecated until the full and final payment of each of the above described promissory notes, as well as any and all renewals or extensions thereof or of any part thereof, however evidenced, and until the full performance of and compliance with all the clauses and stipulations of this act, together with all costs, charges and attorney's fees as herein stipulated, and the said Mortgagor hereby binds and obligates itself, its successors and assigns, not to sell, alienate, deteriorate, or encumber the same to the prejudice of this Act.

Compulsory unitization of oil and gas properties in the interest of conservation is recognized as a valid and proper exercise of Mortgagor's rights, whether requested or ordered, and shall not constitute an encumbrance on the said properties that is prohibited by this act, provided that this mortgage and pledge shall cover and affect all portions of the said properties that may be included in a unit and that portion of the unit production allocated to the mortgaged properties.

Mortgagor, for itself, its successors and assigns, does by these presents agree and stipulate that, subject to the provisions of the notes, it shall be lawful for, and it does hereby authorize, said Mortgagee, in the event of default in the payment of any installment of the aforesaid notes, and the continuance of such default for a period of fifteen (15) days after notice thereof by such Mortgagee to Mortgagor as provided in the notes, without making a demand or putting in default, a putting in default being expressly waived, to cause all and singular the undivided 8.404469% interest in the properties securing such Mortgagee to be seized and sold by executory process, without appraisement (appraisement being hereby expressly waived) either in its entirety or in lots or parcels, as such Mortgagee may determine, to the highest bidder for cash, or on such terms as plaintiff in such proceedings may direct, Mortgagor for

itself, its successors and assigns, hereby confessing judgment for the full amount of said notes, together with all costs, attorneys' fees and all other charges.

Mortgagor does herein and hereby waive the three and five days' notice of demand provided for by Article 735 of the Code of Practice of the State of Louisiana

If at any time during the existence of this mortgage and prior to the full payment of the obligation it secures, the leasehold rights herein mortgaged, or any portion of such leasehold rights having a well capable of producing gas in paying quantities actually situated thereon, (other than leasehold rights as to which a release or re-assignment has been tendered by Mortgagor pursuant to the provisions of the Assignment and Conveyance) should be seized under any legal process and such seizure is not removed or bonded within thirty (30) days after Mortgagor is notified thereof (unless within such period Mortgagee agrees that the continuance of the seizure does not impair its security), or in

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the event an application for adjudication in bankruptcy is filed by or consented to by Mortgagor or an application for involuntary abnkruptcy is filed against Mortgagor and an order shall be entered by any court of competent jurisdiction adjudicating Mortgagor a bankrupt (provided, however, that if Mortgagee shall be given notice of such involuntary application within ten (10) days after the filing thereof and such order is vacated or set aside or stayed within sixty (60) days from the date of its entry, or at least seven (7) days prior to the date set for filing of creditors' claims in such proceeding, whichever is the earliest date, same shall not give rise to the right of acceleration), or in the event of non-payment of any installment of said notes promptly when due and the continuance of such default for fifteen (15) days following demand on Mortgagor

therefor, then and in that event, or upon the occurrence of any of those events (the event continuing on the date the option to accelerate is exercised), the entire unpaid balance on said notes, in principal, attorneys' fees and costs, charges and expenses, shall immediately at the option of the holder or holders of said notes become due and exigible, without any demand, notice or putting in default under the terms hereof as well as under the terms and stipulations of the said notes with which this act is identified. No such seizure shall constitute an event giving rise to the right of acceleration if same is due, in whole or in part, to an existing title defect or the failure to meet its obligations of any owner of the interests reserved in the Assignment and Conveyance by which the Mortgagor acquired the mortgaged properties.

In the event of non-payment of any installment of said notes promptly when due, and within the fifteen (15) day period following the demand and the failure to correct the default, the entire unpaid balance on the notes secured hereby shall immediately, at the option of the holder or holders of said notes, become due and exigible, without any demand, notice or putting in default under the terms hereof as well as under the terms and stipulations of the said notes secured hereby. Any indulgence or extensions or any delay or omission by any holder or holders of the notes secured by this mortgage to exercise any right, option or privilege arising through any default of Mortgagor under this mortgage shall not impair any such rights, options or privileges nor be construed to constitute a waiver of such default or acquiescence therein, nor shall any act evidencing forbearance of any holder or holders of said notes affect, waive or impair its right, option or privilege in respect to any subsequent default.

Mortgagor does by these presents, in order to further secure the payment of said notes in principal, attorneys'

fees and costs, and to secure the performance of all of the provisions therein and herein contained, assign, pledge and deliver unto and in favor of the Mortgagee and unto any future holder or holders of said notes, the gas attributable to the net interest in production (after removal of condensate) in the mortgaged properties, until the full amount of the indebtedness hereby secured, together with attorneys' fees and costs is fully paid.

Mortgagee agrees that, notwithstanding such pledge, Mortgagor may take and dispose of all production affected by this pledge and receive the value thereof from the purchaser, if sold, without liability or responsibility to Mortgagee hereunder, or any future holder or holders of the notes, until (1) a monthly installment on the notes shall not have been timely paid in full (or disputed funds tendered into the registry of the court or escrowed in a bank as provided in the notes), and (2) the holder or holders of the notes shall have given Mortgagor written notice of such default by registered mail, and (3) thirty days

shall have elapsed from the date of receipt by Mortgagor or the notice of default, provided however, that if at any time before the end of said thirty (30) day period Mortgagor either pays in full the delinquent installment on such notes (or deposits disputed funds as therein provided) or tenders to the holder or holders of the notes a written instrument under which it agrees to pay to such holder or holders of the notes a monthly sum of money as payment on the defaulted installments of the notes, determined by multiplying the number of thousand cubic feet of gas produced and saved by Mortgagor from the net interest in production (after removal of condensate) in the mortgaged properties and pledged hereunder by 22.6¢ per thousand cubic feet, Mortgagor may (prior to foreclosure hereunder) continue to take and dispose of the

production affected by such pledge and receive the value thereof from purchaser, if sold, without liability or responsibility to Mortgagee hereunder or any future holder or holders of the notes. Computation of production on which the payment under the written instrument shall be based shall commence on the day of default by Mortgagor and continue until the total sum paid, together with other payments by Mortgagor, places such notes on a current basis. Tender of such written instrument by Mortgagor shall be sufficient, regardless of whether same is accepted; and the holder or holders of the notes shall not be required to accept same.

This pledge is granted under Louisiana Revised Statutes 9:4301 to 9:4304, inclusive, and all other applicable laws; and in the event the conditions provided in the preceding paragraph occur, and the Mortgagor either fails to pay (or deposit) delinquent installments or make the agreement to pay the sum as provided, or having made the agreement to pay the sum as provided, thereafter defaults in its agreement, all rights to production under the pledge and the law may be exercised and enforced by such Mortgagee. No provision of this Act of Mortgage and Pledge shall ever obligate Mortgagor or Mortgagee, their respective heirs, legal representatives, successors or assigns, to take or market production from the mortgaged properties.

This instrument is in all respects to be constructed as a special mortgage, hypothecation, pledge and confession of judgment under the laws of the State of Louisiana by said Mortgagor in favor of said Mortgagee and any future holder or holders of said notes to secure the payment of the principal of the notes above described and also to secure the performance of all obligations of the Mortgagor herein contained and all other sums hereinabove stipulated for.

This mortgage is and shall operate as a real estate mortgage under the laws of Louisiana, and also as a chattel

mortgage under R.S. 9:5351 et seq. Any of the multiple originals hereof may be filed with the Recorder of Acadia Parish, Louisiana, as a chattel mortgage and as a mortgage on realty to secure the payment of the aforesaid notes.

All of the remedies and rights of Mortgagee hereunder shall be cumulative, and each right and remedy may be exercised from time to time without waiving any other right or remedy; and the exercise of any right or remedy of Mortgagee hereunder shall not exhaust same.

No recourse shall be had hereunder for any obligation or claim based hereon against any incorporator or against any stockholder, director or officer, past or present, of Mortgagor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise; and all monetary liability of incorporators, stockholders, directors or officers, as such, whether same be at law or in equity, or by any

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constitution, statute or otherwise, or either, hereunder or on the indebtedness secured hereby, is hereby expressly released and waived by Mortgagee.

The parties hereto waive the production of any mortgage, conveyance and tax certificate and agree to hold the undersigned notary harmless in the premises.

The parties hereto take cognizance of the fact that Mortgagor has executed, simultaneously herewith, similar mortgages in favor of Continental Oil Company, Sun Oil Company and General Crude Oil Company, securing the notes received by them as their shares of the credit portion of the consideration for that certain Assignment and Conveyance executed by Continental Oil Company, et al to Louisiana Gas Corporation, and the parties hereto agree that the liens created by all of said mortgages, including this mortgage, are of equal rank and that the rights of the holder or holders of all the notes secured by such

mortgages may be enforced simultaneously or otherwise and that the exercise of the rights of any mortgagee or future holder or holders of the notes shall not lessen in any way the rights of any mortgagee or future holder or holders of the notes.

In the event that a default exists under any of said three mortgages which gives the holder, or holders, of the mortgage indebtedness thereunder the right to accelerate all of said indebtedness under such mortgage, and such holder, or holders, does so accelerate same, such acceleration shall constitute an independent event of default hereunder equivalent to non-payment of any installment of said notes promptly when due.

THUS DONE AND PASSED, in multiple originals, each having the force of an original although constituting but one instrument, in my office in Houston, Harris County, Texas, in the presence of ..... and ....., competent witnesses, who hereunto sign their names with the said appearers and me, Notary, after reading of the whole.

WITNESSES:

.....

.....

.....

.....

LOUISIANA GAS CORPORATION

By .....
President
Mortgagor

.....
M. H. Marr
Mortgagee

.....
Notary Public in and for
Harris County, Texas

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Hearing Exhibit No. M-21

PROMMISSORY NOTE NO. .....

Houston, Texas

....., 195....

$.....

In the installments hereinafter provided and specified, without grace, and for value received, the undersigned Louisiana Gas Corporation, a Delaware corporation, promises to pay to the order of Continental Oil Company, a Delaware corporation, at its offices in Houston, Texas, the sum of ..... dollars ($.....) without interest from date to maturity.

This note is payable in ..... (.....) equal consecutive monthly installments of $..... each, and one of such monthly installments shall be payable on the first day of each month, beginning with the month of ....., 19....., and continuing until said ..... monthly installments have been paid.

This note is one of a series of sixteen (16) promissory notes, aggregating the principal sum of $68,221,520.00, all of even date herewith executed by Louisiana Gas Corporation and payable to the order of Continental Oil Company, notes one and two each in the principal amount of $3,514,428.00, notes three to fifteen, inclusive, each in the principal amount of $4,477,512.00, and note sixteen in the principal amount of $2,985,008.00, each note payable in installments as therein provided. Said series of notes represents the credit portion of the consideration due payee for the execution and delivery by payee of that certain Assignment and Conveyance from Continental Oil Com-

pany, Sun Oil Company, M. H. Marr, and General Crude Oil Company to Louisiana Gas Corporation of even date covering leasehold interests and other property in the Rayne Field, Acadia Parish, Louisiana.

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In case this note should be placed in the hands of an attorney to institute legal proceedings to recover the amount hereof or any part hereof or to protect the interests of the holder hereof or in case the same should be placed in the hands of an attorney for collection, compromise, or other action, the makers and endorsers bind themselves to pay the reasonable fees of the attorneys who may be employed for that purpose.

The makers, sureties, guarantors and endorsers of this note, and all other parties hereto, severally waive demand, presentment for payment, notice of dishonor, protest and notice of protest, all pleas of division and discussion, diligence in collecting or in bringing suit against any party hereto, and agree to all extensions and partial payments, with or without notice, before or after maturity, hereby binding themselves in solido, unconditionally and as original promisors for the payment hereof in principal, costs and attorneys' fees.

The payment of this note is secured by Act of Mortgage and Pledge of even date, executed by Louisiana Gas Corporation unto Continental Oil Company covering interests in certain oil, gas and mineral leases and leasehold estates in and to certain lands situated in the Parish of Acadia, State of Louisiana and other property situated in such Parish, to which Act of Mortgage and Pledge reference is hereby made for a description of the property mortgaged, the nature and extent of such security and the rights

of the holders of this note in respect thereof as if said mortgage was set out herein in full.

If on ....., 1960, or on .... of any year thereafter, the accumulated gas production (after removal of condensate) attributable to 55.930697% of the net interest in production in the properties covered by the Assignment and Conveyance is in excess of a total base quantity determined by multiplying 22,557,762,000 cubic feet by the number of years since the date

of the first note in this series of notes (except that as to the years ending ....., 1960 and ...., 1961, the quantity used shall be 17,705,715,000 cubic feet rather than 22,557,762,000 cubic feet), then for each 1,879,813,000 cubic feet of the excess, Maker agrees that the last installment then remaining due on this series of notes (and additional installments or notes in inverse order of maturity as required) shall become due and will be payable within 25 days after the due date; provided, however, that excess production which has been previously used as the basis for a required accelerated payment shall be deducted from accumulated gas production in making the above computation.

A cubic foot of gas shall be measured at an absolute pressure of 15.025 pounds per square inch at a temperature of 60 degrees Fahrenheit in accordance with the existing provisions of Louisiana R.S. 55:151-156, known as the Standard Gas Measurement Law of the State of Louisiana; and the terms "gas", "condensate" and "net interest in production" shall have the same meaning as set forth in the Assignment and Conveyance.

If the event of failure to pay any installments herein when due and the continuance of such default for a period

of 15 days after notice in writing of such non-payment from Payee to Maker, then and in such event the entire unpaid balance of this note and all notes in this series shall at the option of Payee at once and without further notice or demand become due and payable; provided, however, that if by reason of a bona fide dispute involving accelerated payments under the terms and provisions of this note or other notes in this series, Maker shall within said 15-day period file suit for a determination of such dispute, depositing in the registry of the court or in an escrow account in a national banking association, the amount of the payment in cash which is involved in the dispute, then Payee's right to accelerate for such cause shall be deferred until said disputed issue shall have been finally determined, subject to the provision that prior to determination thereof all other sums due hereunder and under other notes in this series which are undisputed have been timely paid, and subject to the further provision that any subsequent disputed sums are also deposited in the registry of the court or in escrow pending

the determination. If any amount is so deposited or escrowed as above provided, then upon final determination thereof the losing party to the dispute shall pay the other party interest for the period the disputed funds are in escrow or on deposit at the rate of 4% per annum on such funds.

No recourse shall be had hereunder for any obligation or claim based hereon against any incorporator or against any stockholder, director or officer, past or present, of maker, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise; and all monetary liability of in-

corporators, stockholders, directors or officers, as such, whether same be at law or in equity, or by any constitution, statute or otherwise, or either hereunder, under said Act of Mortgage and Pledge or on the indebtedness secured thereby, is hereby expressly released and waived by Payee.

ATTEST:

.....
Secretary

LOUISIANA GAS CORPORATION

By .....
President

NE VARIETUR for identification with Act of Mortgage and Pledge passed before me this ..... day of ....., 1958.

.....
Notary Public in and for
Harris County, Texas

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BEFORE THE
FEDERAL POWER COMMISSION
UNITED STATES OF AMERICA

Docket No. G-12446

In the Matter of
TEXAS EASTERN TRANSMISSION CORPORATION

Application For a Certificate of Public Convenience and Necessity Pursuant To Section 7 of the Natural Gas Act As Amended

Texas Eastern Transmission Corporation (Applicant) hereby makes application to the Federal Power Commission, pursuant to Section 7(c) of the Natural Gas Act, as amended, and to the Rules and Regulations of the Federal Power Commission issued thereunder, for a Certificate of Public Convenience and Necessity authorizing Applicant to construct and operate the facilities hereinafter described, to lease from Texas Eastern Penn-Jersey Transmission Corporation (Penn-Jersey) and operate the facilities described in an application for a Certificate of Public Convenience and Necessity filed by it concurrently herewith, and to make the sales and render the services hereinafter described by means of all such facilities, together with the existing facilities of Applicant, all as more fully set out hereinafter.

I.

The exact legal name of Applicant is Texas Eastern Transmission Corporation. Applicant is a corporation organized and existing under the laws of the State of Delaware. Its principal place of business is as follows:

Texas Eastern Transmission Corporation
Texas Eastern Building
Shreveport, Louisiana

The name, title and mailing address of the person to whom correspondence and communications concerning this application are to be addressed is:

Walter E. Caine, Vice President
Texas Eastern Transmission Corporation
Texas Eastern Building
Shreveport, Louisiana

Copies should be sent to:

Keith M. Pyburn, Attorney
Texas Eastern Transmission Corporation
Suite 852, 425 Thirteenth Street, N.W.
Washington 4, D. C.

and

Robert M. Harris, Manager of Certificates
Texas Eastern Transmission Corporation
Texas Eastern Building
Shreveport, Louisiana

II.

Applicant is a natural gas company which owns and operates, among other properties, a natural gas transmission system extending from the State of Texas through the Appalachian area to the Eastern Seaboard in the Philadelphia-Newark area. It is authorized to do business in the States of Texas, Louisiana, Arkansas, Missouri, Illinois, Indiana, Ohio, West Virginia, Mississippi, Alabama, Tennessee, Kentucky, Pennsylvania, New Jersey, New York, Oklahoma, Kansas, Colorado and Utah.

III.

Applicant seeks authorization herein to construct and operate the following described facilities:

A. Approximately 22.0 miles of 14-inch pipeline extending from Rayne Field, Acadia Parish, Louisiana, to Applicant's Opelousas, Louisiana, Compressor Station;

B. A new 2,200 H.P. compressor station near Rayne, Louisiana, on the 14-inch Rayne Field lateral proposed in Paragraph A above;

C. Approximately 105.0 miles of 30-inch pipeline loops along Applicant's existing 30-inch pipeline between Opelousas, Louisiana, and Kosciusko, Mississippi;

D. Approximately 140.0 miles of additional 30-inch pipeline loops along Applicant's existing 30-inch pipeline between Kosciusko, Mississippi, and Uniontown, Pennsylvania;

E. The metering and regulating stations necessary to make the sales herein proposed.

The location of such facilities is set forth on Exhibit F, attached hereto. The estimated over-all capital cost of such facilities is approximately $38,908,100, the details of which are set forth on Exhibit K attached hereto.

Applicant proposes to commence construction of such facilities immediately upon receipt of authorization from the Commission and to complete construction thereof for commencement of operation within seven months from the date of issuance of a Certificate of Public Convenience and Necessity.

IV.

Applicant seeks authorization to lease and operate the facilities proposed to be constructed and leased to it by Penn-Jersey

in a companion application filed concurrently herewith and to which reference is made for the purposes of this application.

The facilities referred to above consist of:

A. An additional 4,000 H.P. at Penn-Jersey's Delmont Compressor Station, Westmoreland County, Pennsylvania;

B. Approximately 65.5 miles of 30-inch pipeline loop along Penn-Jersey's pipeline between Delmont, Pennsylvania and Lambertville, New Jersey.

V.

Applicant seeks to sell and deliver to its customers, under long term service agreements and firm rate schedules, the quantities of gas as follows:

Customer	Quantity Proposed To Be Sold (MCFD) 15.025 psia	14.73 psia
Algonquin Gas Transmission Company	10,000	10,200
The Columbia Gas System	25,300	25,807
The Consolidated Natural Gas Companies	39,600	40,393
Equitable Gas Company	14,000	14,280
New Jersey Natural Gas Company	5,000	5,100
United Natural Gas Company	1,600	1,632
Elizabethtown Consolidated Gas Company	1,100	1,121
Illinois Electric & Gas Company	1,000	1,020
City of Anna, Illinois	257	262
City of Jonesboro, Illinois	65	66

Customer	Quantity Proposed To Be Sold (MCFD) 15.025 psia	14.73 psia
Village of Norris City, Illinois	100	102
City of Somerset, Kentucky	1,500	1,530
Tennessee Gas Company	465	474
Totals	99,987	101,988

VI.

The quantities of natural gas proposed to be sold in this application do not fulfill the requests of all of Applicant's customers for additional gas to meet the demands of the market which they serve.

Because there was not a sufficient quantity of gas available to meet the full requirements of all of Applicant's customers, they were asked to reduce their immediate requests in this docket to a total not in excess of the 100,000 Mcf per day to be made available by this application. Such customers as required additional supplies of gas out of that proposed to be made available by this docket agreed to request at this time the quantities shown in Paragraph V, and they are presently executing appropriate letters of intent or service agreements.

Evidence of the total requirements of such customers has or will be filed herewith as Exhibits I(vii)(a) through (n). The requirements of The Columbia Gas System (The Manufacturers Light and Heat Company and The Ohio Fuel Gas Company), The Consolidated Natural Gas Companies (The East Ohio Gas Company, The Peoples Natural Gas Company, New York State

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Natural Gas Corporation and Hope Natural Gas Company) and the Equitable Gas Company were filed as Exhibits I(vii)(a), I(vii)(b) and I(vii)(c) respectively in Docket No. G-12227 to which reference is made for the purpose of this application.

The system gas supplies of the company, as they have from time to time been augmented by contracts for additional supplies, fully support the increased sales and capacity of the Applicant as proposed in this docket. The foregoing is fully demonstrated by the gas purchase contracts, and reserve and deliverability studies already on file with the Commission and which are filed herewith.

VII.

Texas Eastern Penn-Jersey Transmission Corporation (Penn-Jersey) has filed a companion application to this application wherein it seeks authorization to construct certain additional facilities to its pipeline system thereby increasing its capacity to 555,000 MCF per day (at 15.025 psia; 568,000 MCF at 14.73 psia). The additional facilities are proposed to be leased to Texas Eastern and operated by it.

No other application to supplement or effectuate this application must be or is to be filed by Applicant or any other person with any federal, state or other regulatory body.

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VIII.

This is an abbreviated application filed pursuant to Section 157.7 of the Rules and Regulations of the Commission for the reason that the data and information ordinarily required by Section 157.14 to be submitted are not all necessary for a full explanation of the proposal,

its economic justification, and its effect upon the present and future operation of the Applicant and upon the public proposed to be served. Accordingly, the data and information required by Sections 157.5 through 157.14 which are attached hereto and those which are omitted, together with the justification for each such omission, are as follows:

Exhibit A—*Articles of Incorporation and By-Laws.*

A copy of Exhibit A has heretofore been filed as Exhibit A in Docket No. G-12139 and is hereby incorporated by reference herein.

Exhibit B—*State Authorization.*

A copy of Exhibit B has heretofore been filed as Exhibit B in Docket No. G-12139 and is hereby incorporated by reference herein.

Exhibit C—*Company Officials.*

A copy of Exhibit C has heretofore been filed as Exhibit C in Docket No. G-11784 and is hereby incorporated by reference herein.

Exhibit D—*Subsidiaries and Affiliates.*

A copy of Exhibit D has heretofore been filed as Exhibit D in Docket No. G-12139 and is hereby incorporated by reference herein.

Exhibit F—*Location of Facilities.*

Exhibit F is filed herewith.

Exhibits G and G-I—*Flow Diagrams.*

Exhibits G and G-I are filed herewith.

Exhibit G-II—*Flow Diagram Data.*

Exhibit G-II is filed herewith.

Exhibit H—*Total Gas Supply Data.*

Exhibits H(i), H(ii), H(iv) and H(vii) are filed herewith in the form of a separate volume. Exhibit H(iii) is incorporated herein by reference to Docket No. G-12227. Exhibits H(v) and H(ix) are filed herewith and bound with this application. Where reference is made in such exhibits to the official files of the Commission, the referenced material is incorporated herein by reference thereto. The data required by Exhibit H(vi) is set forth on Exhibit N attached hereto. Exhibit H(viii) is omitted as inapplicable to the present application.

Exhibit I—*Market Data.*

The data required by Exhibit I(ii) is included in Exhibit X-1 filed herewith. Exhibit I(iv) is filed herewith. Exhibit I(v) is omitted since all service agreements will be executed on Applicant's standard form of service agreement, as contained in its FPC Gas Tariff, for the quantities set forth in Article V hereof. Attached hereto as Exhibits I(vii)(a) through I(vii)(n) are the market exhibits prepared by the customers proposed to be served in this docket setting forth the data required under Exhibits I(i), I(iii) and I(vii). Exhibits I(vi), I(viii) and I(ix) are omitted as inapplicable to the present application.

Exhibit J—*Conversion to Natural Gas.*

Omitted since no conversion to natural gas is proposed by this application.

Exhibit K—*Cost of Facilities.*

Exhibit K is filed herewith.

Exhibit L—*Financing.*

Exhibits L(i) through L(ix) are filed herewith. Exhibit L(x) is omitted because Applicant has not entered into any such agreements. Exhibit L(xi) is omitted because no such material has

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yet been furnished. Exhibit L(xii) is omitted because no filing has yet been made with the Securities and Exchange Commission.

Exhibit M—*Construction, Operation and Management.*

Omitted since Applicant proposes to operate its system with its present personnel. If authorization is granted as sought herein Applicant will negotiate construction contracts with independent contractors. No such contracts have yet been executed nor are any now under negotiation.

Exhibit N—*Revenues, Expenses and Income.*

Exhibit N is filed herewith.

Exhibit O—*Depreciation and Depletion.*

Exhibit O is incorporated by reference to Docket No. G-12227.

Exhibit P—*Tariff.*

Applicant's FPC Gas Tariff, Second Revised Volume No. 1, has heretofore been filed with the Commission and is hereby incorporated by reference herein. In addition, there are filed herewith as Exhibit P the following:

(1) System cost of service for the first calendar year of operation;

(2) Proposed rate base and rate of return;

(3) Gas operating expenses;

(4) Depreciation computations;

(5) Computations of taxes other than federal income taxes;

(6) Computation of federal income taxes.

Exhibit X-1—*System Gas Balance.*

Exhibit X-1, containing a complete system gas balance for Texas Eastern Transmission Corporation for the years 1959-1960 and historical sales data, is filed herewith.

IX.

WHEREFORE, Applicant respectfully requests the Commission to issue a Certificate of Public Convenience and Necessity authorizing Applicant, pursuant to Section 7(c) of the Natural Gas Act, as amended, to construct and operate the facilities described in Article III hereof, to lease from Penn-Jersey and operate the facilities described in Article IV hereof, to make the sales and render the services herein proposed, as set forth in Article V hereof, and for such other and further relief warranted in the premises.

Respectfully submitted,

TEXAS EASTERN TRANSMISSION CORPORATION

By /s/ WALTER E. CAINE
Walter E. Caine, Vice President

Attorneys for Applicant

Charles I. Francis, General Counsel
Texas Eastern Transmission Corporation
1545 Mellie Esperson Building,
Houston, Texas

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Jack D. Head, Assistant General Counsel
Texas Eastern Transmission Corporation
Esperson Building
Houston, Texas

W. D. Deakins, Jr.
Vinson, Elkins, Weems & Searls
Esperson Building
Houston, Texas

Keith M. Pyburn
Texas Eastern Transmission Corporation
Suite 852, 425 Thirteenth Street, N.W.
Washington 4, D. C.

Joseph F. Weiler
Sterling W. Steves
Texas Eastern Transmission Corporation
Texas Eastern Building
Shreveport, Louisiana

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VERIFICATION

STATE OF LOUISIANA)
PARISH OF CADDO)

Walter E. Caine, being first duly sworn, states that he is a Vice President of Texas Eastern Transmission Corporation; that he is authorized to execute this affidavit; that he has read the above and foregoing Application for a Certificate of Public Convenience and Necessity and is familiar with the contents thereof; that all allegations of

fact therein contained are true and correct to the best of his knowledge and belief.

/s/ WALTER E. CAINE
Walter E. Caine
P.O. Box 1612
Shreveport, Louisiana

SWORN TO AND SUBSCRIBED before me this 19th day of April, 1957.

/s/ ELMON W. HOLMES
Elmon W. Holmes, Notary Public in and for Caddo Parish, Louisiana.
My Commission is for life.

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Docket No. G-12446

Texas Eastern Transmission Corporation

AIRMAIL

Nov 21, 1957

Texas Eastern Transmission Corporation
Shreveport
Louisiana

Gentlemen:

Texas Eastern Transmission Corporation is hereby granted temporary authority pursuant to Section 7 of the Natural Gas Act only to construct the proposed 59 miles of 30-inch pipeline loops as described in its request for temporary authority filed on October 28, 1957.

This authorization is without prejudice to such ultimate disposition of the application for certificate in Docket No. G-12446, including the above described facilities, as the

record may require, and is issued solely upon the representations made by Texas Eastern that it is willing to construct the facilities "at its own risk."

This authorization is conditioned upon the receipt by the Commission on or before December 15, 1957 of a letter filed by a duly authorized official of Texas Eastern accepting the temporary authorization hereby granted. The letter of acceptance shall contain a statement that in the event a certificate of public convenience and necessity is denied by the Commission, with respect to the construction and operation of the whole or any part of the 59 miles of 30-inch loop lines, the cost of construction of the whole or any part of the pipeline shall be borne by the corporate stockholders and such cost will be removed from the corporation's plant investment in facilities and from the corporation's rate base.

The letter of acceptance referred to above shall be accompanied by a resolution of the corporation's board of directors authorizing execution and acceptance of the same under the conditions herein stated.

By direction of the Commision.

J. H. GUTRIDE
Secretary

Approved by the Commission

11/21/57

cc: Mr. Keith M. Pyburn
Suite 852, 425 13th Street, N. W.
Washington, D. C.

RGC
LHF:tsm
11-12-57

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Decision

In the Matters of

Docket No. G-12446
Texas Eastern Transmission Corporation

Docket No. G-12447
Texas Eastern Penn-Jersey Transmission Corporation

Docket No. G-12432
Continental Oil Company

Docket No. G-12885
M. H. Marr

Docket No. G-12913
Sun Oil Company

Docket No. G-12931
General Crude Oil Company

UPON APPLICATION FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FILED PURSUANT TO SECTION 7 OF THE NATURAL GAS ACT

APPEARANCES

For Texas Eastern Transmission Corporation and Texas Eastern Penn-Jersey Transmission Company

Jack D. Head, Esquire, Houston, Texas
W. D. Deakins, Jr., Esquire, Houston, Texas
Frank E. Trobaugh, Esquire, West Frankfort, Illinois
Charles E. McGee, Esquire, Washington, D. C.
Francis H. Caskin, Esquire, Washington, D. C.
R. E. Christiansen, Esquire, Washington, D. C.

(3308)

For Continental Oil Company
Roland B. Voight, Esquire, Houston, Texas
Gene Woodfin, Esquire, Houston, Texas

For M. H. Marr
D. C. Wertz, Esquire, Dallas, Texas

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For Sun Oil Company
Herf M. Weinert, Esquire, Beaumont, Texas
Martin A. Row, Esquire, Dallas, Texas
Robert E. May, Esquire, Washington, D. C.

For General Crude Oil Company
D. F. Morse, Esquire, Houston, Texas

For Public Service Commission of the State of New York
Kent A. Brown, Esquire, Albany, New York
Lawrence M. De Vore, Esquire, Albany,
Barbara M. Suchow, Attorney, Albany, New York
Charles J. Cox, Esquire, Albany, New York

For Ohio Fuel Gas Company
W. F. Laird, Esquire, Columbus, Ohio
Brooks E. Smith, Esquire, New York City

For Manufacturers Light and Heat Company
William Anderson, Esquire, Pittsburgh, Pennsylvania
Brooks E. Smith, Esquire, New York City

For Texas Gas Transmission Corporation
Christopher T. Boland, Esquire, Washington, D. C.
Thomas F. Brosman, Esquire, Washington, D. C.
Thomas R. Ryan, Esquire, Washington, D. C.
William E. Feldhaus, Esquire, Owensboro, Kentucky

For Public Service Electric and Gas Company
Edward S. Kirby, Esquire, Washington, D. C.
J. Harty Mulhern, Esquire, Washington, D. C.
James R. Lacey, Esquire, Washington, D. C.
William R. Duff, Esquire, Washington, D. C.

For Brooklyn Union Gas Company
J. David Mann, Esquire, Brooklyn, New York
Edwin F. Russell, Esquire, Brooklyn, New York
Robert B. Lisle, Esquire, Brooklyn, New York

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For Equitable Gas Company
John T. Brown, Esquire, Pittsburgh, Pennsylvania
Donald I. Moritz, Esquire, Pittsburgh, Pennsylvania

For Philadelphia Electric Company
Vincent P. McDevitt, Esquire, Philadelphia, Pennsylvania
Eugene J. Bradley, Esquire, Philadelphia, Pennsylvania
Samuel G. Miller, Esquire, Philadelphia, Pennsylvania

For Consolidated Natural Gas System Companies
C. W. Cooper, Esquire, New York, New York
George C. Williams, Esquire, New York, New York
Norman A. Flaningam, Esquire, Washington, D. C.

For United Gas Improvement Company
J. David Mann, Jr., Esquire, Washington, D. C.
John E. Holtzinger, Jr., Esquire, Washington, D. C.

For Elizabethtown Consolidated Gas Company
William M. Wherry, Esquire, New York City

For New Jersey Natural Gas Company
Sidney M. Schreiber, Esquire, Newark, New Jersey

For the Staff of the Federal Power Commission
Orson L. Huntsman, Esquire, Washington, D. C.

LAW, PRESIDING EXAMINER: On April 22, 1957, Texas Eastern Transmission Corporation (Texas Eastern) and its wholly-owned subsidiary, Texas Eastern-Penn Jersey Transmission Corporation (Penn-Jersey) filed applications with this Commission for certificates of public convenience and necessity authorizing the construction and operation of additional facilities (consisting primarily of pipeline loops, but including in the case of Penn-Jersey 4,000 horsepower of additional compression at an existing station) to increase the capacity of their respective systems north and east of Opelousas, Louisiana by approximately 100,000 Mcf in order to render additional service to existing customers of Texas Eastern. The application of Texas Eastern also sought

authority to construct and operate a 2200 horsepower compressor station and 22 miles of 14-inch pipeline for this purpose of transporting gas from the Rayne Field in Acadia Parish, Louisiana to Opelousas, as well as authority to make additional sales to existing customers and to construct such additional metering and regulating stations as were necessary for improvement of existing service or for the proposed additional sales to existing customers.

On July 30, 1957, Penn-Jersey supplemented its application in Docket No. G-12447 by filing certain information as to actual deliveries by or for Texas Eastern (primarily east of the Oakford Storage Field), and other information intended to support the application in Docket No. G-12447, as well as that of Texas Eastern in Docket No. G-12446.

Applications for certificates of public convenience and necessity, for the sale of natural gas to Texas Eastern from the Rayne Field, were filed by Continental Oil Company (Continental) on April 17, 1957 in Docket No. G-12432, by M. H. Marr (Marr) on July 15, 1957 in Docket No. G-12885, by Sun Oil Company (Sun) on July 17, 1957

in Docket No. G-12913 and by General Crude Oil Company (General Crude) on July 22, 1957 in Docket No. G-12931. The application of Continental states that it is intended to cover the non-working undivided interests of Kirby Vensyn Petroleum Company, Texas Gas Exploration Corporation, Walter J. Crawford, Nitis H. Hooks, Royalty Corporation of Beaumont, C. B. Claypool, Harry Lucas, Jr., Philip B. Lucas, H. E. Dishman and F. J. Muller, each of whom has authorized filing on his or its behalf by executing a formal authorization, which was on file and open to in spection at Continental's Houston office and would be present in the hearing room during the hearing in Docket No. G-12432.

On August 15, 1957, the applications of Texas Eastern in Docket No. G-12446, of Penn-Jersey in Docket No. G-12447 and of the four independent producers in Docket Nos. G-12432, G-12885, G-12913 and G-12931 were consolidated and notice thereof was authorized by the Commission's Secretary. By order of November 1, 1957, Texas Gas Transmission Company (Texas), Public Service Electric and Gas Company (Public Service), The Brooklyn Union Gas Company (Brooklyn), Philadelphia Electric Company (PX), four subsidiaries of Consolidated Natural Gas Company (jointly described hereinafter as Consolidated), and United Cities Gas Company (United Cities) were permitted to intervene in all of these six proceedings. By the same order The Manufacturers Light & Heat Company and The Ohio Fuel Gas Company (both being subsidiaries of Columbia Gas System, Inc. and being hereinafter jointly called Columbia) and Equitable Gas Company (Equitable) were permitted to intervene in the two pipeline cases

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and United Gas Improvement Company (UGI) was authorized to intervene in the four independent producer

cases. By a further order of November 15, 1957, the intervention of UGI was extended to include the two pipe line cases, New Jersey Natural Gas Company (New Jersey) was authorized to intervene in both pipe line cases and Elizabethtown Consolidated Gas Company (Elizabethtown) was permitted to intervene in Docket No. G-12446 only. A notice of intervention in the six cases was filed by The Public Service Commission of the State of New York (New York), September 11, 1957.

On October 18, 1957, notice was issued of a hearing in these consolidated proceedings, to convene November 19, 1957. On November 12, 1957, the undersigned was designated to preside at the said hearing. The hearing was convened at Washington, D. C. November 18, 1957, according to notice and was continued through Monday, November 25, when a recess was taken to December 9, 1957.

During the opening statement of counsel on November 19, 1957, it became apparent that the design of the proposed transportation facilities of Texas Eastern and Penn-Jersey had been materially altered from those proposed in the application. The changes in design included elimination of all the 105 miles of loop lines originally proposed by Texas Eastern between Opelousas, Louisiana and Kosciusko, Mississippi and all except 59 miles of the 140 miles of loop lines previously proposed to be built by Texas Eastern between Kosciusko and Uniontown, Pennsylvania, as well as all the 65.6 miles of pipeline which Penn-Jersey originally proposed to construct between Delmont, Pennsylvania and Lambertsville, New Jersey.

By its proposal as now amended Texas Eastern proposes to substitute, for its own eliminated pipeline loops, approximately 141,780 additional compressor horsepower at twelve existing compressor stations and to substitute, for the pipeline loops of Penn-Jersey which are eliminated, the leasing and operation of 67,000 compressor horsepower at five new compressor stations to be constructed

in Pennsylvania by Penn-Jersey. Penn-Jersey now seeks authority, by its amended application, to construct five new compressor stations along its existing 24-inch pipeline, (in substitution for the pipe line looping previously proposed) and to lease the proposed new facilities to Texas Eastern. Each of the two pipeline companies also now proposes modification of certain of its existing compressors.

By direction of the Presiding Examiner, notice of the November 22nd amendments to the applications of Texas Eastern and Penn-Jersey was given to all customers of Texas Eastern and to state commissions in states where service is rendered to such customers. At the close of the hearing session of November 22, a recess was taken to December 9, 1957, the record first being

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closed as to evidence in the four independent producer proceedings. The only apparent response to the notice of amendment was the filing of a notice of intervention by the Tennessee Public Service Commission (Tennessee). The said notice by Tennessee indicated no special interest arising from the amendments to the application and Tennessee neither was represented by counsel on December 9th nor filed any briefs subsequently.

After correction of the transcript, there being no requests by anyone for the opportunity to further cross-examine witnesses of Texas Eastern and Penn-Jersey, the record of evidence as to those two applicants was declared closed December 9, 1957 (the record of evidence as to the four independent producers having been closed prior to the recess taken November 22, 1957). Upon consideration of the requests of counsel, time for filing of briefs was then fixed.

Motions for omission of the intermediate decision procedure were made by counsel for the four independent producer applicants following the close of evidence in their

cases on November 25th. Some, but not all, of the interveners concurred in the request and Staff Counsel did not concur. At the close of the record as to the two pipeline applicants on December 9th, a similar motion as to their two proceedings were made by counsel for these two applicants. All the interveners then present concurred in the motion, but Staff Counsel declined to take a position for or against the said motion.

After completion of the independent producer record, counsel for Public Service moved the dismissal of the four applications of the independent producers here under consideration, or in the alternative the remanding of the said matters for further hearing with a requirement that the said producers present evidence as to whether certification of the sales by them to Texas Eastern at the rates proposed was required by public convenience and necessity, under Rule 20, Paragraph J of the Commission's rules of practice and procedure.

The Commission issued an order on December 26, 1957, denying the motions for omission of the intermediate decision procedure. Briefs were filed by the four applicants, by interveners and by Staff Counsel on or before December 27, 1957. Oral argument, in lieu of reply briefs, was held before the Presiding Examiner January 6, 1958. The briefs and oral argument included discussion of the motion to dismiss or remand the four independent producer proceedings.

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The Applicants' Proposals

Texas seeks authorization in Docket No. G-12446 to construct and operate the following-described facilities:

A. Approximately 22.0 miles of 14-inch pipeline extending from Rayne Field, Acadia Parish, Louisiana, to Texas Eastern's Opelousas, Louisiana, Compressor Station;

B. A new compressor station of approximately 2,200 H.P. near Rayne, Louisiana, on the 14-inch Rayne Field lateral described in A above;

C. Approximately 59.0 miles of additional 30-inch pipeline loops along its existing 30-inch pipeline between Kosciusko, Mississippi, and Uniontown, Pennsylvania;

D. The addition of approximately 15,200 H.P. to each of the following existing compressor stations:

1. St. Francisville, West Feliciana Parish, Louisiana,
2. Clinton, Hinds County, Mississippi,
3. Owingsville, Bath County, Kentucky,
4. Athens, Athens County, Ohio;

E. The addition of approximately 14,910 H.P. to its existing Union Church, Jefferson County, Mississippi, Compressor Station;

F. The addition of approximately 10,000 H.P. to its eixsting Kosciusko, Attala County, Mississippi, Compressor Station;

G. The addition of approximately 15,000 H.P. to each of the following existing compressor stations:

1. Egypt, Monroe County, Mississippi,
2. Mt. Pleasant, Giles County, Tennessee;

H. The addition of approximately 870 H.P. to its existing Danville, Lincoln County, Kentucky, Compressor Station;

I. The addition of approximately 7,600 H.P. to each of the following existing compressor stations:

1. Wheelersburg, Scioto County, Ohio
2. Berne, Monroe County, Ohio;

J. The addition of approximately 10,000 H.P. to its existing Holbrook, Green County, Pennsylvania, Compressor Station;

K. The metering and regulating stations necessary to make the sales proposed in the application.

Texas Eastern also proposes to make minor modifications in certain existing compressors, which will increase capacity but leave the compressor horsepower unchanged. The estimated over-all capital cost of the proposed additions and modifications by Texas Eastern is approximately $37,435,000.

Texas Eastern also seeks authorization in Docket No. G-12446 to lease and operate the facilities proposed to be constructed and leased to it by Penn-Jersey in its companion application filed in Docket No. G-12447, which facilities consist of:

A. The addition of approximately 4,000 H.P. to Penn-Jersey's existing Delmont, Westmoreland County, Pennsylvania, Compressor Station;

B. Five new compressor stations of approximately 13,400 H.P. each along its existing 24-inch pipeline at the following locations:

1. Station "A", in Indiana County, Pennsylvania

2. Station "B", in Huntingdon County, Pennsylvania

3. Station "C", in Perry County, Pennsylvania

4. Station "D", in Berks County, Pennsylvania

5. Station "E", in Bucks County, Pennsylvania

Texas Eastern also seeks authority to sell and deliver to existing customers, under long term service agreements

and firm rate schedules, additional quantities of gas as follows:

Customer	*Quantity Proposed to be Sold Mcf per day at 14.73 psia*
Algonquin Gas Transmission Company	10,200
The Columbia Gas System	25,807
The Consolidated Natural Gas Companies	40,393
Equitable Gas Companies	14,280
New Jersey Natural Gas Company	5,100
United Natural Gas Company	1,632
Elizabethtown Consolidated Gas Company	1,121
Illinois Electric & Gas Company	1,020
Village of Norris City, Illinois	102
City of Somerset, Kentucky	1,530
Tennessee Gas Company	474
Approximately	101,660

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Penn-Jersey seeks authorization in Docket No. G-12447, to construct the additional compressor facilities at its Delmont Compressor Station and the five new compressor stations in Pensnylvania, which have been hereinbefore described in connection with Texas Eastern's application and to lease them to Texas Eastern Transmission Corporation. Penn-Jeresy also proposes to modify certain existing compression facilities, now leased and operated by Texas Eastern, in order to increase their capacity without changing their horsepower rating. The estimated over-all capital cost of such additions and modifications is approximately $11,197,000.

Each of the four independent producers seek authority to sell natural gas to Texas Eastern from the Rayne Field in Acadia Parish, Louisiana. The interest of the various

applicants are set forth in their respective applications. Each contract provide for payment of an initial price of 22.6¢ per Mcf by Texas Eastern to the producers and reimbursements to the producers of taxes levied upon and applicable to them as vendors up to a maximum of 1.3¢ per Mcf. Each contract also provide for escalation on November 1st of each year from 1958 through 1975 of 4 mills per Mcf. Provision is also made in the contract for redetermination of the sale price (upon notice), prior to the beginning of each of the five year periods beginning November 1, 1967 and November 1, 1972. The total amount of gas proposed to be sold by the four applicants and the producers represented by Continental amount to approximately 100,000 Mcf per day.

ISSUES AND CONTENTIONS

The issues involved in these proceedings included the question of Commission's jurisdiction over the facilities, services and sales proposed by the six applicants. In the case of Texas Eastern, there is also in issue the need for additional gas, the economic justification of the cost incurred and the life of the additional reserves to be made available to Texas Eastern, as well as the adequacy of the proposed additional facilities for the service which they are intended to perform. In the case of Penn-Jersey, the question of economically feasibility is at issue to a lesser extent, as well as the adequacy of the proposed facilities and the ability to finance them on a solid basis. In the case of the four independent producer applicants who propose to sell Rayne Field gas to Texas Eastern, the basic issues are the existence of adequate reserves to back up the contracts and the question whether any conditions as to proposed rates should be attached to and made a part of the certificates, if such certificates be found to be otherwise required by the public convenience and necessity.

The adequacy of the proposed reserves, the adequacy of the proposed facilities of the two pipeline companies and the estimates of cost of the said facilities are not contested by any of the parties.

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The New York and Philadelphia companies and Public Service contend that, if certificates of public convenience and necessity are to be issued to the applicants in the four producer cases, such certificates should contain conditions limiting the rates of the said producers, or providing that the proposed rates could only be collected under bond, pending a full investigation by the Commission of the propriety of such rates. The producer applicants insist that their gas has only been committed to Texas Eastern on the basis of the proposed rates and state that, if conditions are attached, consideration will be given to the disposition of the Rayne Field gas in markets not subject to this Commission's jurisdiction.

As a corollary to the conditions as to rates which they propose, those customers of Texas Eastern who seek such a condition must take the position that Texas Eastern does not need the Rayne Field gas at the price for which it is proposed to be sold to Texas Eastern by the applicants in the four producer cases here involved. Texas Eastern contends that it does need this gas and is joined in this position by some customer interveners who propose to take a part of it. Other customer interveners who seek additional gas appeared, during the hearing, to take a sort of in-between position and, as far as possible, avoid committing themselves as to the need of Texas Eastern for the additional gas at the prices proposed. It appears that this last group of customers would like to see Texas Eastern get the additional gas but have their tongue in their cheek and hope that the Commission may later (in a rate proceeding)

require the producers to reduce the rate at which the gas from the Rayne Field is sold to Texas Eastern.

The applications of Marr and Sun seek in the alternative, for a disclaimer of jurisdiction or (if the Commission finds that the sales in question are subject to Commission jurisdiction) for certificates of public convenience and necessity. Continental and General Crude did not present their applications in the alternative but did attempt (by the language contained therein) to reserve a position that they were not "natural-gas companies" under the provisions of the Natural Gas Act. Neither the Staff nor any of the interveners supported either the applications for a disclaimer or the reservations claimed by Continental and General Crude, and the positions generally taken by both the Staff and the interveners is inconsistent with either the Marr-Sun position or that of Continental and General Crude in these respects.

During the hearing, Staff Counsel offered an exhibit in the form of a compilation which bore the title "Impact upon purchased gas expense of Texas Eastern Transmission Corporation." the document and the supporting testimony, which was also identified as an

exhibit, purported to show that the proposed 23.9 cent rate would (if permitted to become effective as an initial rate) automatically result in large increases in the cost to Texas Eastern of gas now being purchased by the pipe line. Such a conclusion is wholly contrary to the position heretofore consistently taken by this Commission that proposed escalations in price claimed by reason of "favored nation" clauses in contracts cannot become effective (except under bond and subject to refund) until approved by the Commission as rate increases. Both the exhibits and the testimony were rejected as invading the province of the Hearing Examiner and the Commission and not being evidence

of any fact, but merely unsupported contentions of the witness based upon *his examination* of the contracts on file as rate schedules and *his interpretation* of the language contained in the said contracts. The witness was not alleged to be a lawyer and specially qualified to interpret contracts for sale of gas.

Argument as to the propriety of the exclusion of the compilation (Exhibit No. 48 for Identification) and the supporting testimony of the witness Brinn (Exhibit No. 50 for Identification), which was presented in support thereof, was presented in the briefs of counsel. Staff Counsel takes the position, in his Brief that the case should be reopened and the producers required to submit evidence of production costs, preliminary to the issuance of any certificate.

The Staff made no request on the record for production costs during the hearing, but merely argued that a rate more consonant with the rates then being paid by Texas Eastern under existing contracts of the four independent producers with Texas Eastern should be required as a condition of any certifiate authorized herein. Neither the Staff nor any of the interveners presented in evidence the portions of the other contracts between independent producers and Texas Eastern upon which they relied to support their allegations of anticipated "triggering" or of "attempts to trigger" which might entail upon such interveners the necessity of engaging in additional lawsuits and thereby incurring added burden as to time and money.

The Staff did put in evidence Exhibit No. 47, which is entitled "Summary of Certain Provisions of FPC Gas Rate Schedules in Specific Parishes of South Louisiana." With the exception of Page 15 which recites certain information as to points of delivery, volumes, quality and the original price (only) contained in the contracts with Texas Eastern, which describe the service for which the four independent producers seek a certificate here, this 17 page exhibit does not contain any information about sales

by producers to Texas Eastern. The information contained on pages 1 through 14 and 16 and 17 of Exhibit No. 47 relate to existing contracts of producers with pipe line companies other than Texas Eastern and the rates now in effect thereunder. Moreover, Exhibit No. 47 fails to

furnish any information as to at least two matters necessary, in any comparison, to a determination of reasonableness of rates, even if "fair field price" were to be determined. There is no showing in the exhibit as to either the volumes or the location of the reserves involved and the costs which each purchaser has incurred or will incur in transporting the gas from the point of acquisition to its main transmission system.

The Evidence

Witnesses were called by Texas Eastern or by customer interveners to support all of the proposed additional sales included in the present proposal, with one exception. In that case, an employee of a customer company who had been present during the earlier part of the session was obliged to return home prior to being reached in order of witnesses. The testimony of this intended witness had been prepared and circulated in advance and (by stipulation of counsel) was made a part of the record without a witness being present and without cross-examination, the prepared testimony being undisputed.

Two cities in the State of Illinois, which had originally proposed to take small volumes of additional natural gas, prepared no testimony for service and made no witnesses available in support of their request for gas. It was stated that these two communities never had taken all of the gas for which they are entitled under existing authorizations. By the amendment presented by Texas Eastern on November 22, (during the hearing) the services to these two

communities, which had been proposed in the original application, were deleted.

The prepared testimony, as presented, and the cross-examination of witnesses submitted either by customer companies or by Texas Eastern clearly establish the existence of a demand for the additional gas in a maximum volume of 101,660 Mcf per day at 14.73 of per square inch absolute. This need is hereinafter formally found.

The capability of the proposed facilities of Texas Eastern and Penn-Jersey to transport the proposed additional volumes of natural gas for which authority is sought in these proceedings was established by the testimony of witnesses and the supporting exhibits which they presented and explained. It was also established by the evidence that the estimates of cost of facilities in the amount of $37,435,000 in the case of Texas Eastern and $11,197,000 in the case of Penn-Jersey were reasonable estimates, based upon the current cost of material and labor and upon the previous experience of the two applicants in the installation of similar

transmission facilities heretofore authorized.[1]

Ability to finance the proposed additional facilities of the pipeline applicants was established as firmly as such ability can be established, prior to issuance of the securities which must be sold to raise funds for construction. Texas Eastern proposes to furnish all of the capital needed by Penn-Jersey, through purchase of additional common stock and notes of the latter company.

[1] The following statement appears on page 3 of the Brief of Commission Staff Counsel in these proceedings, filed December 27, 1957

"The staff after review of the data submitted by these pipeline companies raises no questions as to the costs as estimated or to the ability of the facilities to transport the volumes of gas for which they are designed."

The capital requirements of Texas Eastern for the construction proposed in Docket No. G-12446 and for acquisition of securities issued by Penn-Jersey to pay for the construction of the facilities proposed in Docket No. G-12447 are to be met by the issuance of $40 million of First Mortgage Pipeline Bonds and the sale of $10 million of Sinking Fund Preferred Stock. It is estimated that, as a result of this financing, the retirement of securities pursuant to sinking funds, and additions to earned surplus anticipated during 1958, the consolidated capitalization of Texas Eastern, as of December 31, 1958, will consist of approximately 66.3 percent debt and 33.7 percent classified as equity by Texas Eastern. The debt will be divided into Bonds (45.5 percent), Debentures (9.4 percent) and Other Debt (11.4 percent). The equity classification will be divided into Sinking Fund Prefererd (10.7 percent), Convertible (4.) percent) and Common Equity (19.0 percent). While the percentage of Common Equity is on the low side, the total equity does not appear unreasonably low or unjustified. This is especially true when the additions proposed are intended to afford increased service to an established market. Expenditures for such increased service are less speculative and therefore afford better security to the investor than expansion on a similar scale to serve new and untried markets.

Texas Eastern presented testimony as to adequacy of reserves in the Rayne Field, Acadia Parish, Louisiana, owned and operated by the producer applicants and committed to Texas Eastern. This testimony was confirmed by the testimony of witnesses presented by the producers.

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In order to meet requirements of additional sales heretofore authorized in Docket No. G-12227 on September 30, 1957 and to provide the additional gas required for operation of compressors because of the changed design shown

in the amendments moved by Texas Eastern and Penn-Jersey on November 27, 1957, Texas Eastern presented new evidence of reserves available to it from sources other than the Rayne Field. The witness Watson, who is Vice President of DeGolyer and MacNaughton and presented as a gas reserve witness by Texas Eastern, testified that the estimated reserves in the Trevino Field in Mexico have been increased as a result of drilling of three successful wells, which show reserves of gas to be available from four additional sands to which no reserves were assigned in a previous estimate presented in Docket No. G-9784. In addition thereto, subsurface control, by two of the three successful wells referred to in the last sentence, has increased the estimate of reserves available to Texas Eastern from four other sands in the said Trevino Field.

A showing of availability of gas from reserves under contract to or otherwise available to Texas Eastern was presented by the witness Tillery which indicated that no deficiency will occur prior to 1969, if spot purchases continue at the present rate. He also expressed the opinion that full requirements can be met for 13 years from January 1957, with declining deliveries thereafter.

The evidence of reserves was made available to the Staff of this Commission well in advance to the hearing, and cross-examination by Staff did not go beyond clarification, moreover, Staff Counsel did not see fit to question the adequacy of reserves available to Texas Eastern from sources other than the Rayne Field. Staff Counsel did, however, dispute the desirability of authorizing the sale of gas by independent producers to Texas Eastern from the Rayne Field as proposed in the contracts and in the applications of the independent producers. It is admitted by both the Staff and Texas Eastern that a certificate for the proposed facilities would not be justified by the record if the independent producers did not make the proposed sales to Texas Eastern, either because the issuance of a certificate is too

long delayed or because the terms of the certificates issued were unacceptable to the producers.

There is no suggestion of affiliation between either Texas Eastern or Penn-Jersey and any of the independent producers joined in these proceedings. Negotiations were conducted at arms length and over a considerable period of time. The reserves committed are among the largest reserves contracted to any pipe line company from a single field in recent years. The Rayne Field contains one of the largest single reserves in South Louisiana and the reserve involved is larger than any single reserve yet developed in the offshore area. It was the largest uncommitted reserve in South

Louisiana being offered for sale, which is reasonably convenient to the line of Texas Eastern, and deliveries can commence as soon as pipe line facilities can be constructed.

Whether either Texas Eastern or this Commission are happy about the admittedly high price to be paid for gas is not controlling here. There is evidence that the Rayne Field gas which Texas Eastern proposes to purchase from Continental, Marr, Sun, General Crude and the other producers represented by Continental cannot be acquired at an initial price lower than the 22.6 cents, plus 1.3 cents for tax reimbursement, provided for in the contracts here, which apparently resulted from free and open negotiation. The only compulsion which is indicated by the record is that resulting normally from the purchaser's pressing need for additional gas and the attractiveness of competing offers made to the sellers for their product.

Continental is the discoverer of the field and the operator of all but one of the units involved. The Rayne Field is Continental's only major gas discovery in South Louisiana in almost ten years of active exploration. Between the discovery of the East Moss Lake Field in 1944 and the

Rayne discovery (the first well was completed as a producer by Continental in December, 1953), Continental had drilled 173 wells in South Louisiana, including about 40 wildcat wells. Of the 40 wildcat wells, 10 discovered relatively small quantities of gas. Four of the ten wells discovered new fields with additional total reserves of 67.8 billion cubic feet and six extended known producing fields by adding estimated total additional reserves of 110.24 billion cubic feet. Of the remaining 30 wildcat wells, two were completed as oil wells and 28 were found to be dry holes and abandoned.

By the contracts here under consideration, the producer applicants have committed to Texas Eastern (and indirectly to Texas Eastern's utility customers and the consumers served by these utilities) approximately 800 billion cubic feet of gas from the Rayne Field. The significance and importance to Texas Eastern of the acquisition of a reserve of this magnitude becomes quite apparent when compared with the total volume of less than 180 billion cubic feet previously disclosed by about 10 years of exploration by Continental. This gas can be brought into Texas Eastern's system by construction of 22-miles of 14-inch pipeline and one 22 horsepower compressor station at a total cost to Texas Eastern of approximately $1,204,000 and $1,333,000 respectively, the remainder of the cost here involved being for the purpose of increasing Texas Eastern's service and deliveries to its utility customers by expansion of its main transmission line and that of its wholly-owned subsidiary—Penn-Jersey. There is no showing by the Staff or any intervener that any similar volumes can be acquired by Texas Eastern either at a lower purchase price or a lower cost of

connecting faciliites. As pointed out in the case of Seaboard Oil Company, Operator, et al., Docket No. G-11970

et al., (in which case the Initial Decision rendered December 20, 1957 was adopted by Commission action of March 31, 1958)[2] the burden of going forward with evidence as to any conidtion proposed to be attached to a certificate is upon the party or parties seeking the attachment of such a condition. This burden has not been met in the present instance and there has been no evidence introduced which would even constitute a serious attempt to meet such a burden.

Upon the record as a whole it is impossible to find evidentiary support which will justify the re-opening of the case and requiring the producer applicants to present further evidence. Such action on the part of the Presiding Officer or of the Commission would necessarily result in the type of extended hearing on rates which the Commission has condemned in the Seaboard case heretofore cited, as unduly delaying the connection of gas to an established system and for the use of existing customers of such a system. In the present case, the record shows that approximately 500 separate lessor interests are involved and that great numbers of the agreements with those lessors are already delinquent because of the delay in construction of Texas Eastern's line and the beginning of gas purchases from the producers.

As previously stated, neither the Staff nor any interveners has presented evidence which contradicts the testimony of witnesses for the various applicants that the contract price for original deliveries is reasonable, in view of the price being paid by Texas Eastern for Mexican gas, some additional volumes of which will be purchased for use as compressor fuel to help transport the Rayne Field gas to Texas Eastern's market customers. The fact that the price here involved is a new high price for interstate sales from Acadia Parish is only one of several matters

[2] F.P.C. Opinion No. 309.

which we must consider. Another important factor is the fact that other purchasers were willing to pay a price which was comparable in every way, if not in fact higher, and that the choice of Texas Eastern as a customer, by the producers, was based largely upon that pipeline's ability to take the gas with a minimum of delay.

Once the certificate is granted and the deliveries begun, the Commission may, if it desires or if it appears appropriate, institute an investigation of the initial rate and if facts are developed which show the said initial rate to be unreasonable the Commission has power to require reduction to a reasonable rate. Meanwhile, consumers dependent upon Texas Eastern's utility customers for their gas supply will have the benefit of the improved service which the new source in the Rayne Field furnishes to Texas Eastern. Incidentally, the necessity of studying this question of the proposed rate condition appears to have already delayed the availability to Texas Eastern's customers of the additional supply for a considerable period.

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There is however one point at which we find ourselves troubled by a position taken by counsel for Sun during the oral argument. This is the argument that, if the contract price is approved as an initial rate, all fixed-time escalations must also be allowed. This is contrary to principles and policies repeatedly stated by this Commission since the decision of the Supreme Court in the Phillips Petroleum Company case in June, 1954.[3] There is no suggestion here of any temporary discount to assist a new pipe line company to build up its load. The gas from the Rayne Field will augment supply and service to existing customers.

[3] *Phillips Petroleum Company vs. Wisconsin*, 347 U.S. 672.

It was not possible when the contracts between the four producer applicants and Texas Eastern were signed, February 1, 1957 to know whether an increase of 4 mills in the price at which gas was sold would be justifiable on November 1st of 1958 or any year thereafter. Nothing that has intervened since February 1, 1957 has served to increase either our clairvoyance or that of the producers. It is therefore necessary to find that the proposed escalations are not now shown to be justified and to so condition the order issuing a certificate that the producer applicants must file an application for rate increase and justify each proposed November 1st increase, at or before the time when they become effective as established and allowed rates of the said producers. This is done to prevent the applicants taking advantage of any future court decision, which might find approval of an initial rate to have carried with it advance approval of step escalations, when they became due under provisions of a contract.

The price redetermination clauses contained in each of the four independent producer contracts with Texas Eastern need not be considered at this time. These clauses, contained in Article IX of each contract and immediately following the fixed escalation provisions hereinbefore discussed, contain (In Paragraph 4 of Article IX) specific recognition of the authority of this Commission, or any successor thereof to modify them or set them aside in case they conflict with or otherwise purport to limit the jurisdiction of the Commission. For the reasons stated they present no problem in the present certificate proceedings.

Upon the record, the several producer applicants in these proceedings appear to have made a "prima facie" showing that the sale of their gas to Texas Eastern at the proposed price is in the public interest and that the initial rate is not, in the light of the volumes involved and the comparable

cost of obtaining such gas from the only apparent reasonably certain alternative source

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(in Mexico) unconscionable or even unreasonable. Such "prima facie" showing is all that is required in a certificate proceeding. We cannot here predict the results of a possible rate investigation. This is especially true because of the uncertainty existing as to what basis the courts will eventually fix upon as the primary test of the reasonableness of producer rates.

Eventual justification of their rates, when questioned properly in a rate proceeding is a burden which the producers take when they seek a certificate for the sale of gas in interstate commerce for resale. There is no justification for increasing that burden by requiring that such producers present such justification in a certificate proceeding, where the only showing offered by any party for the purpose of questioning reasonableness of the rate is a tabulation of filed rates, under contracts (of various producers with other pipe lines) for sale of gas from other reserves which are not shown to be comparable as to accessibility, formation depths, anticipated volumes or the difficulties generally encountered in production of the wells.

For the reasons previously given and for those contained in the more formal findings hereinafter made, the certificates sought by the four producer applicants are hereinafter authorized, the only conditions thereto being provisions that under no circumstances (short of *legislative* action freeing all producer contracts and rates from this Commission's jurisdiction) shall the certificates hereinafter issued be construed as authorizing, in advance, any proposed periodic escalation.

The motion of Public Service Electric and Gas Company for dismissal or remand of the producer applications is

denied for reasons hereinbefore and hereinafter stated. The request of Staff Counsel for the reversal of the undersigned Presiding Officer's rulings rejecting the offer of Exhibits No. 48 and No. 50 is also refused for the reasons given during the hearing and in this Decision.

As previously stated the only questions raised by the Staff or any interveners in regard to the applications of Texas Eastern and Penn-Jersey were based upon the prices to be paid by Texas Eastern to the independent producer applicants. Since these questions have been resolved in favor of the applicants, the certificates sought by the two pipe line applicants are hereinafter authorized in accordance with their applications, as amended during the hearing.

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FURTHER FINDINGS AND CONCLUSIONS

Upon the facts in evidence, together with the pleadings and the briefs and arguments of counsel, it is further found and concluded that:

1. Texas Eastern Transmission Corporation is a Corporation organized and existing under the laws of the State of Delaware. Its principal place of business is at Shreveport, Louisiana.

2. Texas Eastern is a natural gas company which owns and operates, among other properties, a natural gas transmission system extending from the State of Texas to the Eastern Seaboard in the Philadelphia-Newark area. It is authorized to do business in the State of Texas, Louisiana, Arkansas, Missouri, Illinois, Indiana, Ohio, West Virginia, Mississippi, Alabama, Tennessee, Kentucky, Pennsylvania, New Jersey, New York, Oklahoma, Kansas, Colorado and Utah.

3. Texas Eastern seeks authorization in Docket No. G-12446, as amended, to construct and operate transmission facilities which have been described in its application, as amended, and in this decision and to modify certain existing facilities as also set out in the application, as amended, and in this decision.

4. Texas Eastern also seeks authorization here to lease and operate certain facilities proposed to be constructed and leased to it by Penn-Jersey in Docket No. G-12447 and to sell and deliver to existing customers additional volumes of natural gas up to a maximum volume of 101,660 Mcf per day at 14.73 Mcf, as more fully appears in the application and this decision.

5. The facilities for the construction or leasing and operation of which authorization is sought in Docket No. G-12446 will, when constructed or leased and when operation is begun, be facilities for the transportation and sale of natural gas for resale in interstate commerce and the proposed additional sales, for which authorization is sought in the said Docket No. G-12446, will be sales of natural gas for resale in interstate commerce, all subject to the jurisdiction of and requiring certification by this Commission.

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6. Texas Eastern Penn-Jersey Transmission Corporation is a corporation organized and existing under the laws of the State of Delaware. Its principal place of business is in Shreveport, Louisiana.

7. Penn-Jersey is and has heretofore been found by the Comimssion to be a natural gas company,

which is authorized to do business in the States of Pensylvania and New Jersey, and owns a natural gas pipeline system constructed under authorization granted by and subject to the jurisdiction of this Commission. Facilities owned by Applicant consist of a pipeline system extending from the Oakford Storage Field in Westmoreland County, Pennsylvania to Texas Eastern's Compressor Station No. 26, near Lambertville, New Jersey. Penn-Jersey is a wholly-owned subsidiary of Texas Eastern, and its system is interconnected with that of Texas Eastern, which operates, under lease, all of Penn-Jersey's facilities.

8. Penn-Jersey seeks authorization in Docket No. G-12447, to construct the additional compressor facilities described in its application, as amended, and to lease them to Texas Eastern Transmission Corporation. Penn-Jersey also proposes to modify certain existing compressor facilities, now leased and operated by Texas Eastern. The estimated over-all capital cost of such additions and modifications is approximately $11,197,000.

9. The facilities which Penn-Jersey seeks authority in Docket No. G-12447 to construct and to lease to Texas Eastern for operation, as well as the facilities now under certification by this Commission which Penn-Jersey now proposes to modify, are facilities for the transportation and sale of natural gas in interstate commerce for resale and their construction, leasing and modification are subject to the jurisdiction of this Commission.

10. Continental Oil Company is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, with its principal

place of business at Houston, Texas. It is authorized to do business in each of the 48 states of the United States and in the District of Columbia.

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11. Continental seeks authorization in Docket No. G-12432 to sell and deliver to Texas Eastern in the Rayne Field, Acadia Parish, Louisiana, natural gas produced in the said field, as more fully appears in the aplication and in the contract datde February 1, 1957, which is in evidence as part of Hearing Exhibit No. 3 in these consolidated proceedings.

12. The application of Continental in Docket No. G-12432 covers the interests of the following parties as owners of minor undivided interests in some of the leases which are subject to the Gas Sales Contracts: Kirby Vensyn Petroleum Company, Texas Gas Exploration Corporation, Walter J. Crawford, Nitis H. Hooks, Royalty Corporation of Beaumont, C. B. Claypool, Harry Lucas, Jr., Philip B. Lucas, H. E. Dishman and F. J. Muller. Each of these parties has authorized Continental to file on its behalf.

13. Continental is and has heretofore been found to be a natural gas company, as the term has now been found to be defined in the Natural Gas Act, each of the owners of minor undivided interests for whom Continental has filed in Docket No. G-12432 is or will be a natural gas company when delivery of gas to Texas Eastern is begun on its or his behalf by Continental, and the proposed sale for which a certificate is here sought by Continental is a sale of natural gas in interstate com-

merce for resale, subject to the jurisdiction of this Commission.

14. M. H. Marr is an individual resident of the city and county of Dallas, Texas. His principal business is the production and selling of natural gas and crude oil. A part of the gas which Marr produces is gathered and sold to purchasers which have heretofore been found to be natural gas companies within the meaning of the Natural Gas Act.

15. Marr denies that he is a "natural-gas company" as that term is defined in the Natural Gas Act and asks in Docket No. G-12885 for a disclaimer of jurisdiction by this Commission, or (in the alternative) for a certificate of convenience and necessity authorizing the sale and delivery to Texas Eastern in the Rayne Field, Acadia Parish, Louisiana of natural gas produced by or for Marr in the said field, as more fully appears in the application and in the contract dated February 1, 1957, which is attached to the said application as Exhibit A thereof.

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16. Upon the beginning of deliveries of natural gas by Marr to Texas Eastern in the Rayne Field for resale in interstate commerce, Marr will be engaged in the sale in interstate commerce of the said gas for resale and will be a natural gas company within the meaning of that term in the Natural Gas Act, as now interpreted; and the sale and delivery of natural gas by Marr to Texas Eastern, proposed in his application in Docket No. G-12885, will be subject to the jurisdiction of this Commission.

17. Sun Oil Company is a corporation organized under the laws of the State of New Jersey. Its principal business is the production, transportation, refining, and selling of crude oil, and the marketing of refined products recovered from crude oil. "Inter alia", it has for many years been engaged, and is now engaged in the business of producing and gathering natural gas, and in selling a part of the gas which it produces to purchasers which are natural gas companies within the meaning of the Natural Gas Act.

18. Sun has applied to this Commission in Docket No. G-12913 for an Order of the Commission disclaiming jurisdiction over the facilities and sale of natural gas described therein, or (in the alternative) a Certificate of Public Convenience and Necessity pursuant to the Commission's Order No. 174-B to authorize the sale by Sun of the said gas, which, is produced in the Rayne Field, Acadia Parish, Louisiana to Texas Eastern in accordance with the contract between Sun and Texas Eastern, dated February 1, 1957, and in evidence as part of Hearing Exhibit No. 3 in these proceedings.

19. Sun is and has heretofore been found to be a natural gas company, as the term has now been found to be defined in the Natural Gas Act, and the proposed sale for which a certificate is sought by Sun is a sale of natural gas in interstate commerce for resale, subject to the jurisdiction of this Commission.

20. General Crude Oil Company is a corporation organized under the laws of the State of Delaware, and has its principal place of business in Houston, Texas. It is authorized to do business in the

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states of Arkansas, Colorado, Delaware, Kansas, Louisiana, Nebraska, New Mexico, North Carolina, North Dakota, South Dakota, Oklahoma and Texas.

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21. General Crude has filed an application in Docket No. G-12931 for a certificate of public convenience and necessity pursuant to the Natural Gas Act, for the sale of natural gas to Texas Eastern Transmission Corporation, under a contract dated February 1, 1957, from the Rayne Field, Acadia Parish, Louisiana, as more fully appears in the application of General Crude and in the said contract, which is in evidence here as part of Exhibit No. 3. It denies that the sale is subject to the jurisdiction of the Commission, but files its application pursuant to Order No. 174-B of the Commission. Deliveries were not being made under the aforesaid contracts on June 7, 1954.

22. General Crude is and has heretofore been found to be a natural gas company, as the term has now been found to be defined in the Natural Gas Act, and the proposed sale for which a certificate is here sought by General Crude is a sale of natural gas in interstate commerce for resale, subject to the jurisdiction of this Commission.

23. The reserves from the Rayne Field, Acadia Parish, Louisiana, made available to Texas Eastern under contracts of that company with the several producer applicants herein together with the additional reserve available to Texas Eastern from Mexico and from the 3rd, 4th and 6th Railroad Commission Districts in Texas by reason of revised estimates, are adequate to supply the addi-

tional demand on Texas Eastern's system for which it was directed in Opinion No. 296 to present a further reserve showing, and to supply the 101,660 Mcf per day maximum additional demand, for the supplying of which to existing customers authority is sought by Texas Eastern in Docket No. G-12446, as well as the additional compressor fuel required for transportation of the additional volumes here proposed.

24. The proposed facilities of Texas Eastern described in the application in Docket No. G-12446, as amended and the proposed facilities described in the application of Penn-Jersey in Docket No. G-12447, as amended are adequate in each case to perform the services and make the deliveries proposed by the two pipe line companies in these proceedings.

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25. The estimated cost of the facilities for which certificates are sought by Texas Eastern in Docket No. G-12446 and by Penn-Jersey in Docket No. G-12447 are reasonable and the said two applicants are financially able to construct the said facilities.

26. The leasing by Penn-Jersey to Texas Eastern of the facilities for which a certificate is sought in Docket No. G-12447 and their operation by Texas Eastern as proposed in the application in Docket No. G-12446 is identical with the manner in which the existing facilities of Penn-Jersey are now leased to and operated by Texas Eastern and appears to be consonant with the public interest.

27. The services, sales, operation and construction proposed in Docket No. G-12446 by Texas Eastern

are and will be required by the present and future public convenience and necessity.

28. The construction and leasing to Texas Eastern of the facilities described in the pleadings in Docket No. G-12447 by Penn-Jersey are and will be required by the present and future public convenience and necessity.

29. The natural gas reserve dedicated to Texas Eastern by Continental, Marr, Sun and General Crude by their respective contracts with Texas Eastern, dated February 1, 1957, and by the other owners represented by Continental under their contracts of March 27, April 5 and 11, and May 2, 1957, are adequate for the performance of the service and the delivery of the volumes of natural gas for which certificates are sought by Continental in G112432, by Marr in G-12885, by Sun in G-12913 and by General Crude in G-12931.

30. The service and sale to Texas Eastern proposed by each of the independent producers filing or represented in the proceedings in Docket Nos. G-12432, G-12885, G-12913 and G-12931 are and will be required by the present and future public convenience and necessity.

31. In the course of the hearing, each of the four producer applicants in these consolidated proceedings made a *prima facie* showing of the reasonableness of the proposed initial rate at which it, or any interest represented by it, seeks to sell and deliver gas from the Rayne Field to Texas Eastern, in the light of the comparable volumes involved,

the competitive markets involved and the comparative cost of acquiring (in Mexico) and transport-

ing equal volumes of gas from the Mexican border at the Rio Grande to Acadia Parish, Louisiana.

32. There is no showing by the Staff or by any intervenor that the proposed initial rates are unreasonable, or will in fact, result in any increase in price of other natural gas to Texas Eastern or any other interstate pipeline.

33. Neither the record in these consolidated proceedings nor any evidence offered by any of the parties during the hearing justifies or requires the exercise of the Commission's right to attach, to the issuance of a certificate for any of the independent producers here under consideration, any conditions as to the initial rate or price at which gas is to be sold and delivered to Texas Eastern in the Rayne Field.

34. There is no showing in this record that the proposed initial rate at which gas is to be sold and delivered by the four producer applicants to Texas Eastern is unduly or unreasonably low or that the value of the said gas will be any greater than at present on the 1st day of November of the year 1958 or of any subsequent year.

35. The public convenience and necessity require that each of the certificates issued in Docket Nos. G-12432, G-12885, G-12913 and G-12931 contain a condition that issuance of the said certificates shall, under no conditions or circumstances be deemed or held to authorize any of the proposed annual escalations beginning November 1, 1958, to become effective without the filing by each certificate-holder of notice of the proposed escalation as a rate increase, subject to whatever statutory powers this Commission may then have to suspend

rate increases or to enter upon a hearing as to the reasonableness of such increases in the light of the circumstances and conditions then existing.

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WHEREFORE, IT IS ORDERED, subject to review by the Commission, as provided by its Rules of Practice and Procedure, that:

A. A certificate of public convenience and necessity be and the same is hereby issued in Docket No. G-12446 authorizing Texas Eastern Transmission Corporation to construct and operate the additional transmission and measuring facilities described in its application, as amended, to modify certain of its existing compressors as proposed in the said application as amended, to sell and deliver to present customers the additional volumes of gas proposed in the application in the maximum amount of 101,660 Mcf per day at 14.73 psia, and to lease and operate the facilities of Texas Eastern Penn-Jersey Transmission Corporation described in that company's application in Docket No. G-12447 as amended, and for the construction of which a certificate is hereinafter issued.

B. A certificate of public convenience and necessity be and the same is hereby issued in Docket No. G-12447 authorizing Texas Eastern Penn-Jersey Transmission Corporation to construct the additional transmission facilities described in its application, as amended, to lease the said additional facilities to Texas Eastern Transmission Corporation for operation, and to modify certain of its existing compressors, now under lease to Texas Eastern, as proposed in its said application in Docket No. G-12447 as amended.

C. The construction and modification of facilities certificated in Paragraphs (A) and (B) hereof shall be commenced within 45 days from the date of issuance of this order.

D. A certificate of public convenience and necessity be and hereby is issued in Docket No. G-12432, to Continental Oil Company, authorizing the sale and delivery to Texas Eastern Transmission Corporation of the volumes of natural gas from the Rayne Field in Acadia Parish, Louisiana, described and provided

for in the contract of February 1, 1957, between Continental Oil Company, as seller and Texas Eastern as buyer and the subsequent contracts of March 27, 1957, between F. J. Muller as seller and Texas Eastern as buyer, of April 5, 1957 between Kirby Vensyn Petroleum Company as seller and Texas Eastern as buyer, of April 11, 1957 between Texas Gas Exploration Company as seller and Texas Eastern as buyer, and of May 2, 1957 between H. E. Dishman, Walter J. Crawford, Philip B. Lucas, C. B. Claypool, Harry Lucas, Jr., Nitis H. Hooks and Royalty Corporation of Beaumont as sellers and Texas Eastern as buyer, together with the construction and operation of any facilities subject to the jurisdiction of this Commission necessary therefor, subject to the terms and conditions of this order.

E. Certificates of public convenience and necessity be and hereby are issued in Docket No. G-12885 to M. H. Marr, in Docket No. G-12913 to Sun Oil Company and in Docket No. G-12931 to General Crude Oil Company authorizing the sale and de-

livery by them to Texas Eastern Transmission Corporation of the volumes of gas from the Rayne Field in Acadia Parish, Louisiana described and provided for in their respective contracts of February 1, 1957 with Texas Eastern as buyer, together with the construction and operation of any facilities subject to the jurisdiction of this Commission necessary therefor, subject to the terms and conditions of this order.

F. The certificates issued in Paragraphs A, B, D, and E hereof shall be accepted in writing under oath by a responsible official of the respective applicants within 30 days from the issuance of this order.

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G. The grant of the certificates herein shall not be construed as a determination of the justness or reasonableness of the initial or subsequent prices contained in the gas purchase contracts, nor as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Section 154 of the Commission's Rules and Regulations thereunder requiring the filing of rate schedules for the service herein authorized; and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicants. Further, the action in this proceeding shall not foreclose nor prejudice any future proceeding or objection relating to the operation of any price or related provision in the gas purchase contracts herein involved.

H. Nothing contained in this order shall, under any circumstances or construction of existing law, be construed as authorizing any price escalation on

November 1, of 1958, or any subsequent year, as provided in Article IX, Section 1 of each independent-producer contract or the sale and delivery of gas at any time at such proposed escalated price, without the filing of notice as a proposed rate increase and appropriate action by this Commission, or any successor thereof, as then provided by Statute.

I. It is the intent and purpose of this order that the certificates of public convenience and necessity issued in Paragraphs A, B, D and E shall be interdependent and that no construction of facilities or delivery of natural gas under and by virtue of said certificates shall be commenced until each and all of said certificates shall have been accepted.

J. The general terms and conditions set forth in paragraphs (a), (c)(1), (c)(3), (c)(4) and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act, shall attach to the issuance of the certificates granted in Paragraphs A, B, D, and E hereof, and to the exercise of the rights granted thereunder.

K. The time within which the facilities hereby authorized shall be constructed and placed in actual operation as provided by Paragraph (b) of Section 157.20 of the Commission's Regulations under the Natural Gas Act is hereby fixed at eight months from the date on which this order issues.

GLEN R. LAW
Presiding Examiner

Filed: April 15, 1958
Issued: April 15, 1958

(3417)

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BEFORE THE
FEDERAL POWER COMMISSION

Docket No. G-12913

In the Matter of
SUN OIL COMPANY

Notice of Withdrawal of Certificate Application

Pursuant to Section 1.11(c) of the Commission's Rules of Practice and Procedure, Sun Oil Company hereby gives notice of withdrawal of its application for a certificate of public convenience and necessity in the above-entitled proceeding in Docket No. G-12913. The reason for the withdrawal of the application is the fact that on July 8, 1958 Sun Oil Company terminated and cancelled its contract of February 1, 1957 with Texas Eastern Transmission Corporation covered by its application in Docket No. G-12913.

SUN OIL COMPANY

ROBERT E. MAY
Its Attorney

Joiner Cartwright
Herf M. Weinert
P.O. Box 2831
Beaumont, Texas

Martin A. Row
P.O. Box 2880
Dallas, Texas

Robert E. May
May, Shannon and Morley
1700 K Street, N.W.
Washington 6, D. C.
Attorneys

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DISTRICT OF COLUMBIA: SS

Robert E. May, being first duly sworn, deposes and says that he is an attorney for Sun Oil Company; that as such he has signed the foregoing "Notice of Withdrawal of Certificate Application"; that he is authorized so to do; that he has read said Notice and is familiar with the contents thereof; and that the same are true and correct to the best of his information, knowledge and belief.

ROBERT E. MAY

Subscribed and sworn to before me, a Notary Public, this 9th day of July, 1958.

THOMAS C. EVANS
Notary Public

(SEAL)

My Commission expires September 14, 1960.

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CERTIFICATE OF SERVICE

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BEFORE THE
FEDERAL POWER COMMISSION

Docket No. G-12885

In the Matter of
M. H. MARR

Notice of Withdrawal of Certificate Application

Pursuant to Section 1.11(c) of the Commission's Rules of Practice and Procedure, M. H. Marr hereby gives notice of withdrawal of his application for a certificate of public convenience and necessity in the above-entitled proceeding in Docket No. G-12885. The reason for the withdrawal of the application is the fact that on July 14, 1958, M. H. Marr terminated and cancelled his contract of February 1, 1957, with Texas Eastern Transmission Corporation covered by his application in Docket No. G-12885.

M. H. MARR

By DONLEY C. WERTZ
His Attorney

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STATE OF TEXAS
COUNTY OF DALLAS

Donley C. Wertz, being first duly sworn, deposes and says that he is an attorney for M. H. Marr; that as such he has signed the foregoing "Notice of Withdrawal of Certificate Application"; that he is authorized so to do; that he has read said Notice and is familiar with the contents thereof; and that the same are true and correct to the best of his information, knowledge and belief.

DONLEY C. WERTZ

Subscribed and sworn to before me, a Notary Public, this 15th day of July, 1958.

MARIE MERTON
Notary Public in and for
Dallas County, Texas

My Commission expires June 1, 1959.

3425-3427A

Certificate of Service

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BEFORE THE
FEDERAL POWER COMMISSION

Docket No. G-12931

In the Matter of
GENERAL CRUDE OIL COMPANY

Notice of Withdrawal of Certificate Application

General Crude Oil Company (General Crude), Applicant in Docket No. G-12931, pursuant to Section 1.11(d) of the Commission's Rules of Practice and Procedure, files this notice of withdrawal of its Application for Certificate of Public Convenience and Necessity, filed on July 22, 1957, and submits the following reasons for such withdrawal:

The Gas Sales Contract between General Crude, as Seller, and Texas Eastern Transmission Corporation, as Buyer, dated February 1, 1957, a copy of which is on file in Docket No. G-12931, provides that if all necessary Applications for Certificates of Public Convenience and Necessity and other governmental authorizations necessary to effect such sale have not been obtained prior to September 1, 1957, then either party thereto may cancel and terminate the contract: Pursuant to such provision General Crude has terminated

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and cancelled said contract by notice to Texas Eastern in accordance with the provisions of Article I, paragraph 2(a) thereof. Accordingly, there no longer exists a contract for the sale of gas covering General Crude's interest in the Rayne Field, Acadia Parish, Louisiana, on which to base its Application heretofore filed, and its said Application should therefore be withdrawn.

Respectfully submitted,

GENERAL CRUDE OIL COMPANY

W. P. BERNARD
Chief Accountant

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STATE OF TEXAS
COUNTY OF HARRIS

W. P. Bernard, being first duly sworn, deposes and says that he is the Chief Accountant for General Crude Oil Company; that as such he has signed the foregoing "Notice of Withdrawal of Certificate Application"; that he is authorized so to do; that he has read said Notice and is familiar with the contents thereof; and that the same are true and correct to the best of his information, knowledge and belief.

W. P. BERNARD

Subscribed and sworn to before me, a Notary Public, this the 30th day of July, 1958.

ROSELLE DAVISSON
Notary Public in and for
Harris County, Texas

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Certificate of Service

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F.P.C. DOCKET NOS. G-12446 & 12447
TEXAS EASTERN TRANSMISSION CORPORATION

INDEX

Exhibit	*Title*
M-1	Maps
M-2	Summary of Estimated Capital Cost—Texas Eastern
M-3	Net Adjustments to Transmission Operation and Maintenance Expenses
M-4	Summary of Estimated Capital Cost—Penn-Jersey
M-5	Comparison of Estimated Construction Costs—Texas Eastern
M-6	Comparison of Estimated Construction Costs—Penn-Jersey
M-7	Explanation of Maps
M-8	Income Revenues and Expenses
M-9	Cost of Service

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BEFORE THE
FEDERAL POWER COMMISSION
UNITED STATES OF AMERICA

Docket No. G-12446, G-12447

In the Matter of

TEXAS EASTERN TRANSMISSION CORPORATION
TEXAS EASTERN PENN-JERSEY TRANSMISSION CORPORATION

Petition To Reopen Hearing and To Amend Applications For Certificates of Public Convenience and Necessity Pursuant To Section 7(c) of the Natural Gas Act

Now comes Texas Eastern Transmission Corporation (Texas Eastern) and Texas Eastern Penn-Jersey Transmission Corporation (Penn-Jersey) and, pursuant to the provisions of Section 1.7 and 1.33 of the Commissioner's Rules and Regulations, files this Petition to reopen the hearing and to amend the applications currently pending before the Federal Power Commission. In support of this Petition, Petitioner states as follows:

I.

The name, title and mailing address of the person to whom correspondence and communications concerning the applications are to be addressed is:

Walter E. Caine, Vice President
Texas Eastern Transmission Corporation
Texas Eastern Building
Shreveport, Louisiana

Copies should be sent to:

Keith M. Pyburn
Texas Eastern Transmission Corporation
Suite 825, 425 Thirteenth Street, N.W.
Washington 4, D. C.

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W. D. Deakins
1145 Esperson Building
Houston 2, Texas

and

Robert M. Harris, Manager of Certificates
Texas Eastern Transmission Corporation
Texas Eastern Building
Shreveport, Louisiana

II.

On April 22, 1957, Applicants filed their original application herein for Certificates of Public Convenience and Necessity which were consolidated with applications of Continental Oil Company, Docket No. G-12432; M. H. Marr, Docket No. G-12885; Sun Oil Company, Docket No. G-12913; and General Crude Oil Company, Docket No. G-12931 and on October 18, 1957, notice of hearing in the consolidated dockets was given. The hearing convened on November 19, 1957, and concluded on November 25, 1957, and the record was closed on December 9, 1957.

On April 15, 1958, the Presiding Examiner made findings and conclusions and issued an Order, subject to review by the Commission, granting Certificates of Public Convenience and Necessity to Texas Eastern and Penn-Jersey and the Applicants in the other consolidated dockets substantially in accordance with the applications, as amended, to which decision reference is made for the purpose of this petition.

Exceptions to the decision of the Presiding Examiner were filed by the Staff of the Commission, Sun Oil Company, Applicant in Docket No. G-12913, Public Service Commission of the State of New York, Public Service Electric and Gas Company and United Gas Improvement Company. At the time of filing of this petition no action has

been taken by the Commission with reference to the exceptions to the Examiner's decision.

III.

Shortly prior to the hearing on these applications, it became necessary to amend and applications to eliminate a substantial part of the then proposed pipe line additions because of the inability at that time to secure pipe in sufficient quantities to permit construction of the facilities as planned. Compression facilities were therefore substituted for a large part of the pipe, as described on page 7 of the Examiner's decision. Shipping schedules for the gas turbine prime movers which were proposed to be used in the construction program to replace the pipe have deteriorated so that now it will be impossible to install all such gas turbines in time to meet the schedules for the proposed deliveries of gas which are to commence not later than November 1, 1958. Sufficient quantities of pipe are now available, so that it is possible to substitute pipe for some of the gas turbine movers and complete the project in time to make the deliveries during the winter of 1958-1959. It is proposed in this amended application to modify the design of the facilities accordingly.

IV.

In addition to the pipe line loops and the compression facilities referred to above, Texas Eastern's application herein seeks authority to construct and operate 22 miles of 14-inch pipe line and related facilities for the purpose of transporting gas from the Rayne Field in Acadia Parish, Louisiana, to Opelousas. Applications for Certificates of Public Convenience and Necessity for the sale of natural gas to Texas Eastern from the Rayne Field were filed by

Continental Oil Company (Continental) in Docket No. G-12432; by M. H. Marr (Marr) in Docket No. G-12885; by Sun Oil Company (Sun) in Docket No. G-12913 and by General Crude Oil Company (General Crude) in Docket No. G-12931. The application of Continental also covered the interests of certain minority interest owners in the Rayne Field. The evidence adduced at the hearing showed that each of the aforementioned independent producers proposed to sell natural gas to Texas Eastern from the Rayne Field under a gas purchase contract providing for an initial price of 22.6¢ per Mcf plus certain tax reimbursements. Each contract also provided for an annual price escalation in the amount of four mills per Mcf on November 1 of each year from 1958 through 1975 with provisions for price redeterminations prior to the beginning of each of the five year periods commencing on November 1, 1967 and November 1, 1972. It was established that the gas reserves committed to Texas Eastern under such gas purchase contracts amounted to approximately 800 billion cubic feet of gas, and the total of the initial contract quantities thereunder was approximately 100,000 Mcf of gas per day.

Although the Presiding Examiner rendered a decision herein granting a Certificate of Public Convenience and Necessity to each of the above named independent producers, such decision has been appealed to the Commission by the Staff of the Commission, Sun, the Public Service Commission of the State of New York, Public Service Electric and Gas Company and The United Gas Improvement Company. During the pendency of such appeal, Sun, Marr and General Crude have each served notice of cancellation of its respective gas purchase contract with

Texas Eastern and filed notice of the withdrawal of its application for Certificate of Public Convenience and Necessity. These gas purchase contracts cover approximately 45% of the total Rayne Field gas reserves.

In view of the foregoing and in order to avoid the loss of all or part of the major gas supply contained in the Rayne Field, Texas Eastern has carried on negotiations for the purchase of the leasehold interests formerly committed to its contract with Continental, Sun, Marr and General Crude. Such negotiations have now progressed to the point where the necessary documents are being finalized for execution by the parties. In reopened proceedings Texas Eastern will show that the effect of its acquisition of such leasehold interests will be to reduce and stabilize the cost of gas from the Rayne Field to the ultimate benefit of its customers. For example, Texas Eastern will show that through such acquisition, gas attributable to Texas Eastern's working interest in the Rayne Field can be produced at an average cost of service equal to approximately 20.7¢ per Mcf as compared to an average contract price of 26.6¢ per Mcf provided for under the gas purchase contracts previously submitted in this docket. Moreover, the acquisition of such leases by Texas Eastern will result in the cancellation of all of its existing contracts for the purchase of gas from the Rayne Field and thus eliminate any possible triggering effect upon the Favored Nations clauses of its other gas purchase contracts or

any adverse effect upon price redetermination or Favored Nations clauses of other pipe line company contracts in the area. Finally, by acquiring the Rayne Field leases, Texas Eastern will achieve a much greater flexibility in

its operations which will result in a substantial additional ultimate saving to its customers.

V.

Texas Eastern proposes herein the following modifications in the main line facilities as proposed in its application, as amended, and as set out on page 7 of the Examiner's decision:

1. Construct 12.5 miles of 30" pipe line loop on the intake side of the Wheelersburg, Ohio, compressor station and eliminate one 7,600 horsepower gas turbine driven centrifugal compressor previously proposed to be installed at Wheelersburg, Ohio.

2. Construct 16.3 miles of 30" pipe line loop on the intake side of the Berne, Ohio, compressor station and eliminate one 7,600 horsepower gas turbine driven centrifugal compressor previously proposed to be installed at Berne, Ohio.

3. Install an additional 13,600 horsepower in the Union Church Station, Jefferson County, Mississippi, in place of 12,300 horsepower as previously proposed, making a total horsepower in that station of 16,210 in place of 14,910.

The location of the facilities in question is shown on Exhibit M-1 and a comparison of the estimated capital cost of the facilities as originally proposed with those now proposed is set forth on Exhibit M-5 which shows an increase of $303,000 or a revised total estimated capital cost of $37,738,000.

3445

VI.

Penn-Jersey proposes herein the following modification in the facilities as proposed in the application, as amended, and as set out on page 8 of the Examiner's decision:

Construct 12.5 miles of 30" pipe line loop between the compressor station at Bechtelsville, Pennsylvania and Lambertville, New Jersey, and eliminate one 13,400 horsepower gas turbine driven centrifugal compressor station previously proposed to be installed at Station E, Bucks County, Pennsylvania.

The location of the facilities as revised is shown on Exhibit M-1 and a comparison of the estimated cost of the facilities as originally proposed with those now proposed is set forth on Exhibit M-6 which shows an increase of $153,000 or a revised total estimated capital cost of $11,350,000.

VII.

A substantial saving in operating expenses, with no change in service from that proposed in the original application, results from the proposed purchase by Texas Eastern of leasehold interests in the Rayne Field and the proposed modification of facilities. This saving, totalling $1,419,700 for 1959, is made up of (1) $801,600 in cost of gas, (2) $358,100 in transmission, operation, and maintenance expense and (3) $260,000 in compressor station fuel.

VIII.

No other application to supplement or effectuate the proposal of Texas Eastern and Penn-Jersey is to be filed by either of them or any other person with any other federal, state or other regulatory body.

IX.

The following exhibits are filed herewith to show the effect upon the applications, as amended:
Exhibit M-1, page 1.

This exhibit shows sections of the flow diagram of the Texas Eastern system reflecting the conditions in the pipeline sections which are affected by the change from compression to pipe line loop. Further explanation of the exhibit is presented in an enclosure entitled "Explanation to Exhibit M-1," filed herewith as Exhibit M-7.

The balance of the flow diagram (Hearing Exh. 7, Docket No. G-12446) is unchanged.

Exhibit M-1, page 2.

This exhibit shows sections of the flow diagram for Penn-Jersey and reflects the conditions in the pipe line sections which are affected by the change from compression to pipe line loop. This

exhibit is further explained in the "Explanation of Exhibit M-1" filed herewith as Exhibit M-7. The balance of the flow diagram (Hearing Exh. 7, Docket No. G-12446) is unchanged.

Exhibit M-2, pages 1, 2 and 3.

Page one of the exhibit is a summary of the estimated capital cost of the Texas Eastern system and tabulates Hearing Exh. No. 9 together with the proposed modification of that exhibit. Pages 2 and 3 show the detailed backup costs for the construction of the two pipe line loops.

Exhibit M-3.

This exhibit reflects the change in operating expenses for the year 1959 and is a modification of Hearing Exh. No. 11.

(3447)

Exhibit M-4, pages 1 and 2.

Page one of this exhibit is a summary of the estimated capital cost of the Penn-Jersey system and tabulates the information contained in Hearing Exh. 10 and the modification of that exhibit as proposed. Page two shows the detailed backup of the estimated construction costs of 12.5 miles of the 30" loop line on the Penn-Jersey system.

3448

Exhibit M-5.

This exhibit presents a comparison of the estimated construction costs of the Texas Eastern system as shown by Hearing Exh. 9, Docket No. G-12446 and as proposed by this amendment as reflected in Exhibit M-2.

Exhibit M-6.

This exhibit shows a comparison of the estimated construction costs of the Penn-Jersey system as shown by Hearing Exh. 10, Docket No. G-12447 and as proposed by this amendment as reflected in Exhibit M-4.

Exhibit M-7.

This exhibit is an explanation of Exhibit M-1, pages 1 and 2.

Exhibit M-8.

Exhibit M-8 is filed herewith as a modification of Hearing Exhibit 11 to reflect the changes in Revenues, Expenses and Income brought about by this amendment.

Exhibit M-9.

Exhibit M-9 is filed herewith as a modification of Hearing Exhibit 15 to show the effect of this amendment on the cost of service.

3449

X.

Hearing Exhibits Nos. 30 through 40 in Docket No, G-12446 conclusively demonstrate that it is necessary for Texas Eastern to deliver the quantities of gas as proposed during the 1958-59 heating season in order that the customers seeking such service may adequately meet their market requirements. In view of the delay in filing this petition which was occasioned by the protracted negotiations in the consummation of the arrangements described in Paragraph IV above, Petitioners believe that the only means by which the facilities can be constructed in time to meet the delivery schedule is by the expeditious issuance of a temporary certificate authorizing the construction of the facilities and the sales, as proposed.

Because the proposals in the amendments to the application of Texas Eastern and Penn-Jersey present no great complications, good cause exists to omit the publication in the Federal Register of a notice of the reopened hearing; or in the alternative to combine the notice of amended application with the notice of hearing in order to expedite these proceedings. In that connection Texas Eastern says that it has served copies of this Petition on all interveners and participants which intervened and took part in the proceedings heretofore held.

3450

WHEREFORE, Petitioners request the Commission to reopen the proceedings in these dockets in order that Petitioners can submit evidence to substantiate the modifications of the facilities as herein proposed and at the conclusion thereof to issue Certificates of Public Convenience and Necessity authorizing Texas Eastern to construct and operate the facilities proposed to be constructed and operated by it and authorizing Penn-Jersey to construct the facilities proposed to be constructed by it and lease such

facilities to Texas Eastern and authorizing Texas Eastern to lease and operate the facilities proposed to be constructed by Penn-Jersey and further authorizing Texas Eastern to make the sales and render the service proposed herein and for such other and further relief as is warranted in the premises.

Applicant further requests that, pending final determination of the Applications, as further amended hereby, the Commission issue temporary authorization, pursuant to the provisions of Section 157.17 of the Commission's Rules and Regulations, authorizing the construction of the modified facilities to commence as soon as possible and authorizing the sales proposed herein.

Respectfully submitted,

TEXAS EASTERN TRANSMISSION CORPORATION

and

TEXAS EASTERN PENN-JERSEY TRANSMISSION CORPORATION

Walter E. Caine, *Vice President*

3625

Docket No. G-12446
Texas Eastern Transmission Corporation

Docket No. G-12447
Texas Eastern Penn-Jersey Transmission Corporation

AIRMAIL

Texas Eastern Transmission Corporation and
Texas Eastern Penn-Jersey Transmission Corporation
Texas Eastern Building
Shreveport, Louisiana

Gentlemen:

Texas Eastern Transmission Corporation and Texas Eastern Penn-Jersey Transmission Corporation are hereby

granted temporary authority pursuant to Section 7 of the Natural Gas Act to construct and operate facilities and sell natural gas to Texas Eastern's customers as requested in their petition filed on October 29, 1958 in Docket Nos. G-12446 and G-12447. This authorization does not cover the proposed Rayne Field Lateral and Rayne Compressor Station.

This authorization is conditioned upon the receipt by the Commission on or before January 15, 1959 of a letter filed by duly authorized officials of Texas Eastern and Penn-Jersey accepting the temporary authorization hereby granted. The letter of acceptance shall contain a statement that in the event certificates of public convenience and necessity are denied by the Commission, with respect to the construction and operation of the whole or any part of the herein authorized facilities, the cost of construction of the whole or any part of such facilities shall be borne by the corporate stockholders and such cost will be removed from the plant investment and rate base of the respective corporations.

The letter of acceptance referred to above shall be accompanied by resolutions of Texas Eastern's and Penn-Jersey's boards of directors authorizing execution and acceptance of the same under the conditions herein stated.

Texas Eastern's 11 service agreements filed with its letters dated October 23, 1958 and October 27, 1958, are hereby accepted for filing effective as of the date of this authorization.

3626

This acceptance for filing shall not be construed as constituting approval of the service agreements or of any rate, charge, classification, or any rule, regulation or practice affecting such rate or service contained in your tariff; nor shall each acceptance be deemed as recognition of any claimed contractual right or obligation associated

therewith; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceding now pending or hereafter instituted by or against your companies.

The temporary authorization and acceptance of the above service agreements for filing are without prejudice to such final disposition of the applications for certificates as the record may require and is issued solely upon the representations made by Texas Eastern and Penn-Jersey that they are willing to construct and operate the facilities at their own risk.

By direction of the Commission.

J. H. GUTRIDE, *Secretary*

cc: Texas Eastern Transmission Corporation
Suite 825
425 Thirteenth Street, N.W.
Washington 4, D. C.

Mr. W. D. Deakins
1145 Esperson Building
Houston 2, Texas

RCC
LHF:tsm
12-4-58
cc: Files (3)
O.O.C. (2)
All Commissioners
Mr. Nelson
Secretary

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. G-12432

In the Matter of
CONTINENTAL OIL COMPANY

Conditional Notice of Withdrawal of Application For Certificate of Public Convenience and Necessity

Continental Oil Company, herein called Continental, Applicant for a certificate of public convenience and necessity authorizing its sale to Texas Eastern Transmission Corporation, herein called Texas Eastern, of natural gas from the Rayne Field, Acadia Parish, Louisiana, pursuant to its contract of sale dated February 1, 1957, on file with the Federal Power Commission, herein called Commission, in accordance with Section 1.11(d) of the Commission's Rules of Practice and Procedure, files this Conditional Notice of Withdrawal of Application for Certificate of Public Convenience and Necessity heretofore filed with the Commission on April 17, 1957, conditioned only upon the granting by the Commission to Texas Eastern of a certificate of public convenience and necessity as

applied for by Texas Eastern in its Motion to Reopen Hearing and To Amend Application in Docket Nos. G-12446 and G-12447, as the same have been supplemented September 25, 1958, December 4, 1958, and December 13, 1958, and recites the following reasons for such conditional withdrawal:

The applications of independent producers Continental, et al (Docket No. G-12432), M. H. Marr (Docket No. G-12885), Sun Oil Company (Docket No. G-12913) and General Crude Oil Company (Docket No. G-12931) were con-

solidated for hearing with the applications of Texas Eastern (Docket No. G-12446) and Texas Eastern Penn-Jersey Transmission Corporation (Docket No. G-12447), and the Decision of the Presiding Examiner, after hearing, issued on April 15, 1958, granting all of said certificate applications subject to review of the Commission.

Subsequent to the issuance of said Decision, all of the above producers entered into negotiations with Texas Eastern to sell their gas in place, and at the request of all the above parties, no further action has since been taken by the Commission. As negotiations were firmed up, M. H. Marr, Sun Oil, and General Crude cancelled their sales contracts with Texas Eastern and by Notices, withdrew their certificate applications.

3640

Continental has now executed and delivered to Texas Eastern a contract of sale whereby Continental agrees to assign to Texas Eastern its leasehold rights in the same lands formerly dedicated to the gas sales contract, subject only to Texas Eastern acquiring a certificate under its amended application, all other prerequisites to such in place sale having been satisfactorily met. The effect of the acquisition of such certificate by Texas Eastern will be to nullify the gas sales contract, and render a certificate to make such sale to Continental unnecessary.

WHEREFORE, Continental respectfully requests that upon action of the Commission granting to Texas Eastern a certificate as now applied for, the application of Continental for a certificate of public convenience and necessity in Docket No. G-12432 be withdrawn, and should the Commission take any action other than to grant such certificate, that Continental be promptly notified.

CONTINENTAL OIL COMPANY

BRUCE R. MERRILL
Its Attorney

3641

VERIFICATION

STATE OF TEXAS
COUNTY OF HARRIS

Before me, a notary public in and for Harris County, Texas, on this day personally appeared Bruce R. Merrill, who, being duly sworn, on oath says that he is an attorney for Continental Oil Company, applicant herein, and that the statments of fact set forth in the foregoing Notice are true and correct.

BRUCE R. MERRILL

Sworn to and subscribed before me, this 22nd day of January, 1959.

HALLIE R. MADELEY
Notary Public in and for
Harris County, Texas

My Commission expires June 1, 1959.

3642-3645

CERTIFICATE OF SERVICE

3646

BEFORE THE
FEDERAL POWER COMMISSION
UNITED STATES OF AMERICA

Docket No. G-12446

In the Matter of
TEXAS EASTERN TRANSMISSION CORPORATION

Fourth Supplement To Petition To Reopen Hearing and To Amend Application For Certificate of Public Convenience and Necessity Pursuant To Section 7(c) of the Natural Gas Act

Now comes Texas Eastern Transmission Corporation (Texas Eastern), Applicant herein, and files this Fourth Supplement to the Petition to Reopen the Hearing and to Amend the Application for a Certificate of Public Convenience and Necessity in the above entitled and numbered docket.

I.

The Lease Purchase Agreement dated December 4, 1958, and related agreements heretofore filed with the Commission in connection with the Second Supplement to the Petition to Reopen in this proceeding reveal that Texas Eastern's right to acquire the leasehold interests in the Rayne Field, Acadia Parish, Louisiana, therein referred to, is conditioned upon Continental Oil Company, Sun Oil Company, General Crude Oil Company, and M. H. Marr receiving from the Internal Revenue Service a ruling in writing to the effect that the gain from the sale of such leasehold interests will be considered as gain from the sale of a capital asset held for more than six months under the provisions of Section 1231 of the Internal Revenue Code of 1954. This

3647

Fourth Supplement is filed for the purpose of informing the Commission that such condition has now been met to the satisfaction of Continental Oil Company, Sun Oil Company, General Crude Oil Company, and M. H. Marr as is reflected by the letters from such parties to Louisiana Gas Corporation dated January 19, January 21, January 23, and January 19, 1959, respectively, and the letter from Louisiana Gas Corporation to Texas Eastern dated February 2, 1959, copies of which letters are attached hereto and made a part hereof.

WHEREFORE, Applicant reiterates the prayer of the original Application and the Petition to Reopen and Amend.

Respectfully submitted,

TEXAS EASTERN TRANSMISSION CORPORATION

Jack D. Head
Vice President and General Counsel
9th Floor, Memorial Professional Bldg.
Houston, Texas

3648

STATE OF TEXAS
COUNTY OF HARRIS

Jack D. Head, being duly sworn, hereby deposes and says that he is Vice President and General Counsel of Texas Eastern Transmission Corporation; that he is duly authorized to execute the foregoing Fourth Supplement; that he has read said Fourth Supplement and is familiar with its contents, and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.

JACK D. HEAD

(3648)

Subscribed and sworn to before me, a Notary Public in and for Harris County, Texas, this 3rd day of February, 1959.

Notary Public in and for
Harris County, Texas
FLORRIS H. PLOWMAN

My Commission expires: June 1, 1959.

(SEAL)

3649

COPY

CONTINENTAL OIL COMPANY

P.O. Box 2197
Houston 1, Texas
January 19, 1959

Louisiana Gas Corporation
Attention of Mr. Campbell A. Griffin
11th Floor Esperson Building
Houston 2, Texas

Gentlemen:

Re: Lease Sale Agreement
Rayne Field, Acadia Parish,
Louisiana

Continental Oil Company has received a ruling from the Internal Revenue Service that, in the opinion of Continental and as to the interests of Continental, satisfies Condition 2 of the Lease Sale Agreement dated December 4, 1958, between Continental Oil Company, Sun Oil Company, M. H. Marr and General Crude Oil Company, as First Parties, and Louisiana Gas Corporation, as Second Party.

Louisiana Gas Corporation, and the other First Parties to said Lease Sale Agreement, are hereby notified that

said Condition 2 of the Lease Sale Agreement has been satisfied as to Continental Oil Company.

Yours very truly,

CONTINENTAL OIL COMPANY

By /s/ O. L. FISHER

cc: Sun Oil Company

Attention: Mr. Buford R. Koehler
P.O. Box 2831
Beaumont, Texas

Mr. M. H. Marr
Attention: Mr. Donley C. Wertz
2500 Republic National Bank Building
Dallas, Texas

General Crude Oil Company
Attention: Mr. J. W. Cutbirth
P.O. Box 2252
Houston 1, Texas

(3650)

3650

COPY

SUN OIL COMPANY
GULF COAST DIVISION
SAN JACINTO BUILDING
P. O. BOX 2831
BEAUMONT, TEXAS

January 21, 1959

Louisiana Gas Corporation
11th Floor, Esperson Building
Houston 2, Texas
Attention: Mr. Campbell A. Griffin

Re: *Lease Sale Agreement, Rayne Field, Acadia Parish, Louisiana*

Gentlemen:

Sun Oil Company, as one of "First Parties" to Lease Sale Agreement between Continental Oil Company, Sun Oil Company, M. H. Marr and General Crude Oil Company as First Parties and Louisiana Gas Corporation as Second Party, dated December 4, 1958, has received from the Internal Revenue Service a ruling in writing dated January 13, 1959.

Louisiana Gas Corporation and the other First Parties to said Lease Sale Agreement are hereby notified that

Condition 2 set forth in such Lease Sale Agreement has been satisfied as to Sun Oil Company.

Very truly yours,

SUN OIL COMPANY

By /s/ DONELSON CAFFERY
Agent and Attorney-in-Fact

cc: Continental Oil Company
Attention: Mr. O. L. Fisher
P. O. Box 2197
Houston 1, Texas

Mr. M. H. Marr
Attention: Mr. Donley C. Wertz
2500 Republic National Bank Bldg.
Dallas, Texas

General Crude Oil Company
Attention: Mr. J. W. Cutbirth
P. O. Box 2252
Houston 1, Texas

3651

COPY

GENERAL CRUDE OIL COMPANY
POST OFFICE BOX 2252
HOUSTON 1, TEXAS

January 23, 1959

Continental Oil Company
Attention Mr. O. L. Fisher
P. O. Box 2197
Houston 1, Texas

Sun Oil Company
Attention Mr. Buford R. Koehler
P. O. Box 2831
Beaumont, Texas

M. H. Marr
Attention Mr. Donley C. Wertz
2500 Republic National Bank Building
Dallas, Texas

Louisiana Gas Corporation
Attention Mr. Campbell A. Griffin
11th Floor, Esperson Building
Houston 2, Texas

Re: Lease Sales Agreement—
Rayne Field, Acadia Parish
Louisiana

Gentlemen:

By letter dated January 13, 1959, the Internal Revenue Service, acting through Mr. Howard T. Swartz, Assistant Commissioner, issued a ruling to General Crude Oil Company relating to the tax consequences of the proposed sale from General Crude Oil Company, et al to Louisiana Gas Corporation.

This is to advise each of you that such ruling is satisfactory to General Crude Oil Company and satisfies Condition No. 2 in the Lease Sale Agreement dated December 3, 1958, by and between Continental Oil Company, Sun Oil Company, M. H. Marr, and General Crude Oil Company, as First Parties, and Louisiana Gas Corporation, as Second Party.

Yours very truly,

GENERAL CRUDE OIL COMPANY

/s/ J. W. Cutbirth

(3652)

3652

COPY

MARR COMPANY
2500 REPUBLIC NATIONAL BANK BUILDING
DALLAS 1, TEXAS

January 19, 1959

Continental Oil Company
P. O. Box 2197
Houston 1, Texas
Attention: Mr. O. L. Fisher

Sun Oil Company
P. O. Box 2831
Beaumont, Texas
Attention: Mr. Buford R. Koehler

General Crude Oil Company
P. O. Box 2252
Houston 1, Texas
Attention: Mr. J. W. Cutbirth

Louisiana Gas Corporation
11th Floor, Esperson Building
Houston 2, Texas
Attention: Mr. Campbell A. Griffin

Re: Lease Sale Agreement
Rayne Field
Acadia Parish, Louisiana

Gentlemen:

By letter dated January 13, 1959, The Internal Revenue Service, acting through Mr. Howard T. Swartz, Assistant Commissioner, issued a ruling to M. H. Marr relating to the tax consequences of the proposed sale from M. H. Marr et al to Louisiana Gas Corporation.

(3653)

Pursuant to Lease Sale Agreement dated December 4, 1958, this is to advise that Condition No. 2 thereof has been satisfied insofar as M. H. Marr is concerned.

Very truly yours,

M. H. MARR

By /s/ Donley C. Wertz
Executive Assistant

3653

COPY

LOUISIANA GAS CORPORATION
ESPERSON BUILDING
HOUSTON 2, TEXAS

February 2, 1959

Texas Eastern Transmission Corporation
P. O. Box 1189
Houston 1, Texas

Re: Lease Purchase Agreement
Rayne Field
Acadia Parish, Louisiana

Gentlemen:

Please refer to the Lease Purchase Agreement dated December 4, 1958, between Louisiana Gas Corporation and Texas Eastern Transmission Corporation, wherein Louisiana Gas Corporation agrees to sell to Texas Eastern Transmission Corporation all of the leasehold interests and related properties of Continental Oil Company, Sun Oil Company, General Crude Oil Company, and M. H. Marr in the Rayne Field, Acadia Parish, Louisiana, covered by that certain Lease Sale Agreement dated Decem-

ber 4, 1958, between Louisiana Gas Corporation and Continental Oil Company, et al, annexed as Exhibit I to the subject Lease Purchase Agreement.

Continental Oil Company, Sun Oil Company, General Crude Oil Company, and M. H. Marr by letters dated January 19, January 21, January 23 and January 19, 1959, respectively, (copies of which are attached hereto) have each advised Louisiana Gas Corporation that a ruling has been received from the Internal Revenue Service that satisfies Condition No. 2 of the Lease Sale Agreement attached as Exhibit I to the subject Lease Purchase Agreement between Louisiana Gas Corporation and Texas Eastern Transmission Corporation.

Yours very truly,

LOUISIANA GAS CORPORATION

By /s/ Campbell A. Griffin
Campbell A. Griffin
President

Attachment

3668

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, William R. Connole, Arthur Kline and John B. Hussey.

In the Matters of

Docket No. G-12446 [1]

TEXAS EASTERN TRANSMISSION CORPORATION

Docket No. G-12447 [1]

TEXAS EASTERN PENN-JERSEY TRANSMISSION CORPORATION

Order Reopening Proceedings and Fixing Date of Hearing

(Issued February 19, 1959)

Texas Eastern Transmission Corporation (Texas Eastern), a natural-gas company and Texas Eastern Penn-Jersey Transmission Corporation (Penn-Jersey), a natural-gas company and a subsidiary of the former, applied for certificates of public convenience and necessity under Section 7 of the Natural Gas Act authorizing the construction and operation of certain natural gas pipeline facilities, which facilities would become integral parts of the existing pipeline system which extend from points in Texas and Louisiana to points in Pennsylvania, New York and New Jersey as well as intermediate points lying between. Pursuant to due notice given and published, hearings were held upon the said applications during the month of November 1957, and thereafter the matters were concluded at a hear-

[1] Consolidated for purposes of hearing with the applications of independent producers: Continental Oil Company (Docket No. G-12432), M. H. Marr (Docket No. G-12885), Sun Oil Company (Docket No. G-12913) and General Crude Oil Company (Docket No. G-12931); seeking authorization to sell natural gas in interstate commerce to Texas Eastern.

ing after a recess in January 1958, at which time the record was closed and the matters submitted to the Presiding Examiner for decision. On April 15, 1958, the Presiding Examiner rendered his decision with respect to the applications. Exceptions to such decision were filed by The Manufacturers Light & Heat Company, The Ohio Fuel Gas Company, The Brooklyn Union Gas Company, Equitable Gas Company, Philadelphia Electric Company, The East Ohio Company, Hope Natural Gas Company, The Peoples Natural Gas Company, United Gas Improvement Company, United Cities Gas Company and New York Public Service Commission. The matters were then before the Commission for final decision.

On August 11, 12 and 20, 1958, letters from the Commission to the three independent producers, parties to the consolidated proceedings herein and hereinafter named, permitted withdrawals of the applications in the respective dockets. Their names, docket numbers and dates of filing of notices of intent

to withdraw are as follows: Sun Oil Company (Docket No. G-12913), M. H. Marr (Docket No. G-12885) and General Crude Oil Company Docket No. G-12931); respeetive filing dates July 9, July 16 and August 1, 1958. Continental Oil Company filed a notice of withdrawal in Docket No. G-12432 on January 27, 1959, which said notice has not been acted upon.

On September 8, 1958, Texas Eastern and Penn-Jersey filed a joint motion to reopen hearing and to amend their respective applications. Since September 8, five supplements to the said motion have been filed by petitioners together with an application for a temporary certificate authorizing construction and operation of the facilities described in their original applications, as amended, which said facilities constitute those which have not been in-

stalled under the temporary authorization issued by the Commission on November 21, 1957, and excludes those facilities therein described, consisting of 22 miles of 14-inch pipeline and appurtenant facilities extending to the Rayne Field, Acadia Parish, Louisiana to the Opelousas Compressor Station.

On December 5, 1958, the petitioners herein filed the second supplement to the petition to reopen hearing in which filing it is averred that Texas Eastern has negotiated contracts under which it will acquire the leasehold interests in the Rayne Field from the independent producers from whom it originally proposed to purchase natural gas.

An agreement title "Lease Purchase Agreement," dated December 4, 1958, between the four independent producers named in the original proceedings hereof as First Parties and Louisiana Gas Corporation (Louisiana Gas)[2] a Delaware corporation, as Second Party. The second party, by the terms of the said agreement agrees to buy from the first parties their interest in leases on lands in Acadia Parish, Louisiana, for a price of $181,065,000. If less than the total leaseholds are sold, Texas Eastern will purchase the remainder of such leaseholds at a price based upon a pro rata basis. The agreement states that first parties make no representations or warranties as to volumes of gas reserves or recoverability of gas.

Texas Eastern, by the terms of an agreement with Louisiana Gas, agrees to pay it $12,420,500, in cash and the balance in notes for the assignment, transfer and conveyance of the leases above mentioned. The agreement between Louisiana Gas and Texas Eastern is filed with the Commission as an exhibit attached to Supplement 2 above referred to.

[2] Louisiana Gas would be a wholly owned subsidiary of Texas Eastern.

The Commission finds:

(1) It is necessary and appropriate in the public interest to reopen the proceedings in the above-designated matters upon the motion of Texas Eastern and Penn-Jersey to permit the presentation of evidence with respect to the amended proposals.

(2) The proceedings in the above-designated matters should be reopened for the purpose of allowing the evidence to be adduced concerning the matters and issues presented by Texas Eastern and Penn-Jersey in their motion to reopen as supplemented.

(3) The proceedings should be remanded to the Presiding Examiner for further hearing in accordance with findings (1) and (2) hereof.

The Commission orders:

(A) That the proceedings In the Matters of Texas Eastern Transmission Corporation, Docket No. G-12446, and Texas Eastern Penn-Jeresy Transmission Corporation, Docket No. G-12447, be and the same hereby are reopened for the reception of evidence upon the lease sale agreements dated December 4, 1958 and the proposed amendments to the applications relating to the facilities to be constructed and the alterations proposed.

(B) The proceedings above-designated are hereby remanded to the Presiding Examiner for further hearing for the purposes set forth in findings (1) and (2) hereof.

(C) Pursuant to authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Natural Gas Act a hearing will be held on March 10, 1959 at 10:00 a.m. (EST) in a hearing room of the Commission, 441 G Street, N.W., Washington, D. C.,

concerning the matters involved in and the issues presented by the joint motion of Texas Eastern and Penn-Jersey.

(D) Parties who participated in the original proceedings may participate in the reopened proceedings without filing further petitions for leave to intervene. Any additional protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the Rules of Practice and Procedure (18 C.F.R. 1.8 or 1.10) on or before March 6, 1959.

By the Commission.

/s/ J. H. Gutride
Joseph H. Gutride,
Secretary.

3700

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck and Arthur Kline.

In the Matters of

Texas Eastern Transmission Corporation — Docket No. G-12446

Texas Eastern Penn-Jersey Transmission Corporation — Docket No. G-12447

Order Granting Motion for Omission of Intermediate Decision Procedure and Order Denying Motion to Expedite Time for Filing Briefs

(Issued April 6, 1959)

On March 17, 1959 following the conclusion of the hearing in the reopened proceeding in the above-entitled matters

(3700)

Texas Eastern Transmission Corporation (Texas Eastern) filed a motion to omit the intermediate decision procedure and to reduce the time for filing briefs as fixed by the Presiding Examiner at the close of the said hearing on March 13, 1959. The Public Service Commission of the State of New York filed an answer to the said motions of Texas Eastern on March 26, 1959. In the answer so filed no objection was made to the omission of the intermediate decision procedure, but as to the motion to expedite the filing of briefs objection was made.

The Commission finds:

(1) In the record of the instant proceedings sufficient facts are shown to warrant the omission of the intermediate decision procedure, and no opposition to the granting of such motion has been made.

(2) The facts and circumstances stated in the answer by The Public Service Commission of the State of New York and the Presiding Examiner's order setting the dates for filing briefs justify the denial of the motion to shorten the time for filing of briefs.

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The Commissioner orders:

(A) The motion to omit the intermediate decision procedure be and the same hereby is granted.

(B) The motion to expedite the filing of briefs be and the same hereby is denied.

By the Commissioner.

[SEAL]

J. H. GUTRIDE
Joseph H. Gutride,
Secretary.

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Errata Notice

(April 7, 1959)

Order Granting Motion for Omission of Intermediate Decision Procedure and Order Denying Motion to Expedite Time for Filing Briefs

(Issued April 6, 1959)

Page 1, after the words "Before Commissioners" delete "Arthur Kline and insert "William R. Connole" in lieu thereof

Page 2, on the first and last line, change the word "Commissioner" to read "Commission"

/s/ Joseph H. Gutride,
Secretary

MEMORANDUM TO FILES:

This notice was sent to all person(s), etc, to whom order of 4/6/59 was sent.

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VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 644

THE UNITED GAS IMPROVEMENT COMPANY, PETITIONER,

vs.

CONTINENTAL OIL COMPANY, ET AL.

No. 693

FEDERAL POWER COMMISSION, PETITIONER,

vs.

M. H. MARR, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NO. 644 PETITION FOR CERTIORARI FILED NOVEMBER 2, 1964
NO. 693 PETITION FOR CERTIORARI FILED NOVEMBER 16, 1964
CERTIORARI GRANTED JANUARY 18, 1965



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IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

Nos. 20560, 20564, 20582, 20587, 20829, 20846, 20847, and 20591

M. H. MARR, SUN OIL COMPANY, CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION, *Petitioners,*

v.

FEDERAL POWER COMMISSION, *Respondent.*

On Petitions to Review Opinions and Orders of the Federal Power Commission

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JOINT APPENDIX

(Volume II)

3708

Docketed June 23, 1959

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Opinion No. 322

In the Matters of	Docket Nos.
Texas Eastern Transmission Corporation	G-12446
Texas Eastern Transmission Corporation (formerly Texas Eastern Penn-Jersey Transmission Corporation)	G-12447
Continental Oil Company	G-12432

Opinion and Order Issuing Certificate of Public Convenience and Necessity and Modifying and Adopting Initial Decision of Presiding Examiner

Issued: June 23, 1959

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APPEARANCES

For Texas Eastern Transmission Corporation and Texas Eastern Penn-Jersey Transmission Company

Jack D. Head, Esquire, Houston, Texas
W. D. Deakins, Jr., Esquire, Houston, Texas
Frank E. Trobaugh, Esquire, West Frankfort, Illinois
Charles E. McGee, Esquire, Washington, D. C.
Francis H. Caskin, Esquire, Washington, D. C.
R. E. Christiansen, Esquire, Washington, D. C.

For Continental Oil Company

Roland B. Voight, Esquire, Houston, Texas
Gene Woodfin, Esquire, Houston, Texas

For M. H. Marr

D. C. Wertz, Esquire, Dallas, Texas

For Sun Oil Company
Herf M. Weinert, Esquire, Beaumont, Texas
Martin A. Row, Esquire, Dallas, Texas
Robert E. May, Esquire, Washington, D. C.

For General Crude Oil Company
D. F. Morse, Esquire, Houston, Texas

For Public Service Commission of the State of New York
Kent A. Brown, Esquire, Albany, New York
Lawrence M. De Vore, Esquire, Albany, New York
Barbara M. Suchow, Attorney, Albany, New York
Charles J. Cox, Esquire, Albany, New York

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For Ohio Fuel Gas Company
W. F. Laird, Esquire, Columbus, Ohio
Brooks E. Smith, Esquire, New York City
William C. Hart, Esquire, New York City
Frederick Clark, Esquire, New York City

For Manufacturers Light and Heat Company
William Anderson, Esquire, Pittsburgh, Pennsylvania
Brooks E. Smith, Esquire, New York City
William C. Hart, Esquire, New York City
Frederick Clark, Esquire, New York City

For Texas Gas Transmission Corporation
Christopher T. Boland, Esquire, Washington, D. C.
Thomas F. Brosman, Esquire, Washington, D. C.
Thomas F. Ryan, Esquire, Washington, D. C.
William E. Feldhaus, Esquire, Owensboro, Kentucky

For Public Service Electric and Gas Company
Edward S. Kirby, Esquire, Newark, New Jersey
J. Harry Mulhern, Esquire, Newark, New Jersey
James R. Lacey, Esquire, Newark, New Jersey
William R. Duff, Esquire, Washington, D. C.
Frederick M. Broadfoot, Esquire, Newark, New Jersey

For Brooklyn Union Gas Company

J. David Mann, Esquire, Brooklyn, New York
Edwin F. Russell, Esquire, Brooklyn, New York
Robert B. Lisle, Esquire, Brooklyn, New York
Harry G. Hill, Jr., Esquire, Brooklyn, New York

For Equitable Gas Company

John T. Brown, Esquire, Pittsburgh, Pennsylvania
Donald I. Moritz, Esquire, Pittsburgh, Pennsylvania

For Philadelphia Electric Company

Vincent P. McDevitt, Esquire, Philadelphia, Pennsylvania
Eugene J. Bradley, Esquire, Philadelphia, Pennsylvania
Samuel G. Miller, Esquire, Philadelphia, Pennsylvania

For Consolidated Natural Gas System Companies

C. W. Cooper, Esquire, New York, New York
George C. Williams, Esquire, Cleveland, Ohio
Norman A. Flaningam, Esquire, Washington, D. C.

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For United Gas Improvement Company

J. David Mann, Jr., Esquire, Washington, D. C.
John E. Holtzinger, Jr., Esquire, Washington, D. C.

For Elizabethtown Consolidated Gas Company

William M. Wherry, Esquire, New York City

For New Jersey Natural Gas Company

Sidney M. Schreiber, Esquire, Newark, New Jersey

For the Staff of the Federal Power Commission

Orson L. Huntsman, Esquire, Washington, D. C.

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, Arthur Kline and John B. Hussey.

In the Matters of	Docket Nos.
Texas Eastern Transmission Corporation	G-12446
Texas Eastern Transmission Corporation (formerly Texas Eastern Penn-Jersey Transmission Corporation)	G-12447[1]
Continental Oil Company	G-12432

OPINION NO. 322

Opinion and Order Issuing Certificate of Public Convenience and Necessity and Modifying and Adopting Initial Decision of Presiding Examiner

(Issued June 23, 1959)

Texas Eastern Transmission Corporation (Texas Eastern) here seeks a certificate of public convenience and necessity under subsections (c) and (e) of Section 7 of the Natural Gas Act (Act) authorizing the expansion of its pipeline system capacity north and east of Opelousas, Louisiana by 101,660 Mcf per day (14,73 psia), to render additional service to eleven existing customers.[2] The basic

[1] Texas Eastern Penn-Jersey Transmission Corporation (Penn-Jersey) filed the application in Docket No. G-12447. This company, which was a wholly-owned subsidiary of Texas Eastern, has since merged with Texas Eastern, pursuant to Commission authorization in Docket No. G-14870; and reference to Texas Eastern or to its application herein includes, where appropriate, reference to Penn-Jersey or to its application.

[2] The customer companies and the volumes of gas they will receive are set forth in ordering paragraph (A) hereinafter.

question in this case, before us on the omission of the intermediate decision procedure, is whether Texas Eastern's project in its present modified form, including reliance on Texas Eastern's acquisition of the Bayne Field leases instead of its purchase of the gas therefrom under gas purchase contracts with the producers, is required by the public convenience and necessity and otherwise meets the requirements of Section 7(e) of the Act.

This is the second stage in these proceedings. In the first stage, the four producers which proposed to supply Texas Eastern the gas for this service—Continental Oil Company (Continental), M. H. Marr (Marr), Sun Oil

Company (Sun) and General Crude Oil Company (General Crude)—sought certificates to sell Texas Eastern gas produced in the Rayne Field in Acadia Parish in southern Louisiana. The Rayne Field is one of the few large and fully developed gas reserves not presently committed to and serving a market. The gas purchase contracts provided for an initial price to Texas Eastern of 22.6 cents per Mcf, plus 1.3 cents tax reimbursement.

Relying on this gas as a part of its gas supply, Texas Eastern proposed by means of additional facilities estimated to cost approximately $48,600,000, to expand its system, which extends from gas fields in Louisiana and East Texas, in order to render increased service to existing customers principally in the middle Atlantic states.

A hearing was had on these applications and by his initial decision issued April 15, 1958, the presiding examiner would have granted these proposals of Texas Eastern and the producers. Exceptions were filed by staff counsel, certain distributing company customers of Texas Eastern, and the New York Public Service Commission, objecting principally to the examiner's conclusion that the public convenience and necessity required certification of these

projects at the initial prices provided for in the producer contracts, and his refusal to attach a condition to the producer certificates reducing those prices.

While the matter was pending before the Commission on these exceptions, Texas Eastern was negotiating with the producers for changes in their contracts, and it initiated the second stage of these proceedings by filing on September 8, 1958, a petition to reopen the hearing and to amend its certificate applications. In support of this request, the company stated that after exceptions had been filed to the examiner's decision, three of the producers—Sun, General Crude and Marr—had served notice of cancellation of their gas sales contracts with Texas Eastern and filed notice of the withdrawal of their certificate applications. These contracts cover approximately 45 percent of the total Rayne Field gas reserves underlying Texas Eastern's project. Texas Eastern stated that it had negotiated with the producers for the purchase of the leasehold interests formerly committed to the contract between them and Texas Eastern. It stated that the necessary final documents were being prepared, and requested opportunity to show in the reopened proceedings the benefits to the public which would accrue from this arrangement. In addition, Texas Eastern stated that it desired to modify the design of certain of its facilities, and requested opportunity to substantiate the proposed modifications. It also requested temporary authority to construct the facilities it proposed, as modified.

Thereafter, Texas Eastern modified its lease purchase agreements with the producers on two different occasions, eventually entering into agreements to acquire the gas, as set forth in the Second and Third Supplements to its petition to reopen hearing filed on December 5 and 15, 1958, respectively. In the latter filing, Texas Eastern advised the Commission that it had acquired the right to purchase the entire working interest

of Continental, Marr, Sun and General Crude in the Rayne Field leases, under the terms and conditions of the final Lease Purchase Agreement dated December 4, 1958, which it filed with the Commission.

There was no opposition to these supplemental petitions and by order issued February 19, 1959, we reopened the proceedings for the reception of evidence upon the Lease Purchase Agreement dated December 4, 1958, and upon the proposed modifications to Texas Eastern's facilities.

Hearings were had in the reopened proceeding in March, 1959, and there being no opposition thereto, by order issued April 6, 1959, we granted Texas Eastern's motion to omit the intermediate decision procedure, bringing the case before us for decision.

On December 5, 1958, we had granted Texas Eastern temporary authority to construct and operate certain facilities which, with facilities previously authorized on a temporary basis, enabled the company to increase the maximum daily delivery capacity of its system by 101,660 Mcf of gas per day. We did not grant Texas Eastern authority to construct and operate the facilities to attach the Rayne Field reserves, however.

The Public Convenience and Necessity

In his initial decision issued April 15, 1958, the presiding examiner concluded that certificates should issue to Texas Eastern and the producers authorizing the projects they then proposed. Except as to two matters hereinafter disposed of,[3] exceptions to the examiner's decisions were di-

[3] One of the producers, Sun, excepted to the examiner's attaching conditions to the produce: certificates requiring the filing of applications for rate increases for future escalation increases. In the light of this opinion this question is now moot. In addition, exceptions were filed to the lack of any findings by the examiner with respect to the economic feasibility of Texas Eastern's project. This matter is discussed hereinafter.

rected solely to his conclusion that the producers' sales were required by the public convenience and necessity at the 22.6-cent initial price proposed, and to the several questions related to this issue. The producer applications have now been withdrawn, excluding Continental's, and except for the proposed acquisition of the Rayne Field leases, Texas Eastern's project remains in most basic respects unchanged by the amendments the company proposed in the reopening hearing.

We conclude that the findings and conclusions of the presiding examiner which are still applicable to Texas Eastern's modified project are correct and substantially supported by the evidence and we shall adopt them as our own. As to the modifications proposed by Texas Eastern, in

our judgment the modified project, as evidenced by the earlier record and the record in the reopened hearing, is in each of its several aspects required by the public convenience and necessity and otherwise meets the requirements of the Act.

Markets and financing.—We find, as did the examiner, that there is a market for the additional volumes of gas which Texas Eastern will make available by means of the additional facilities proposed herein. No party has expressed any opposition to the sales to the distributing companies in the volumes and at the prices proposed by Texas Eastern under the modified proposal. Likewise, the evidence demonstrates and we find that Texas Eastern's ability to finance the proposed facilities, as modified, is sufficiently well-established for purposes of this proceeding; in fact, a considerable portion of the facilities had been constructed under temporary authorization at the time of the reopened proceedings.

Facilities.—We also find that the facilities proposed by Texas Eastern, as modified, are adequate to transport the additional volume of gas, and their design and estimated cost are reasonable.[4] No opposition has been expressed thereto by any party. The modifications proposed and supported at the reopened hearing result from the present availability of pipe which the company could not secure earlier, and the modified facilities have several advantages over the previous design. Although estimated capital costs for the facilities proposed by Texas Eastern are increased by $456,000 to a total of $49,088,000, the record shows that annual operating and maintenance expenses will be reduced approximately $358,100 as a result of the elimination of the compression at both the Wheelersburg and Berne Stations on the Texas Eastern system and Station E on the former Penn-Jersey system and the substitution

[4] Texas Eastern would modify its project by the following changes in the main-line facilities described on page 7 of the presiding examiner's initial decision issued April 15, 1958, as more fully set forth in the company's application, as amended:

1. Construct 12.5 miles of 30" pipeline loop on the intake side of the Wheelersburg, Ohio, compressor station and eliminate one 7,600 H.P. gas turbine driven centrifugal compressor previously proposed to be installed at Wheelersburg, Ohio.

2. Construct 16.3 miles of 30" pipeline loop on the intake side of the Berne, Ohio, compressor station and eliminate one 7,600 H.P. gas turbine driven centrifugal compressor previously proposed to be installed at Berne, Ohio.

3. Install an additional 13,600 H.P. in the Union Church Station, Jefferson County, Mississippi, instead of 12,300 H.P. as previously proposed, making a total horsepower at that station of 16,210 in place of 14,910.

4. Respecting the facilities proposed in the application of Penn-Jersey and as described on page 8 of the examiner's decision aforesaid, construct 12.5 miles of 30" pipeline loop between the compressor station at Bechtelville, Pennsylvania and Lambertville, New Jersey and eliminate one 13,400 H.P. gas turbine driven centrifugal compressor station previously proposed to be installed at Station E, Bucks County, Pennsylvania.

of the pipeline loops therefor. In addition, there will be a reduction in cost of $260,000 resulting from a reduction in gas used for compressor station fuel, so that the total estimated savings under the modified proposal will approximate $618,000 annually.

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Gas supply and acquisition of Rayne Field reserves,— Turning to the question of gas supply, as indicated previously, Texas Eastern proposed at the first hearing to secure the gas for its project from four producers in the Rayne Field, at an initial price of 22.6 cents per Mcf, plus 1.3 cents tax reimbursement, with contract escalations as enumerated below. However, Texas Eastern now proposes to supply the project's gas needs by purchasing the oil and gas leases and related properties of Continental, Sun, Marr, and General Crude (hereinafter referred to as Continental, *et al.*), insofar as they apply to the proved reserves.

The three companies which filed exceptions to the examiner's decision objecting to the producer prices for gas under Texas Eastern's original proposal interposed no objection to the acquisition of and reliance on the Rayne Field reserves by Texas Eastern, either from the point of view of the price of gas to the company under its revised proposal or otherwise. Virtually the only opposition to Texas Eastern's revised project comes from the New York Public Service Commission. In essence, the New York Commission's position appears to be that in order to justify certification of Texas Eastern's modified project, a record must be made justifying the cost to Texas Eastern of the Rayne Field leases, which showing in turn must be based on a justification of the costs thereof to the producers. Thus the New York Commission requests that this proceeding be remanded to the examiner to "determine upon what price for the acquisition of the Rayne Field

leaseholds, public convenience and necessity would require authorization of the related construction herein proposed by Texas Eastern," contending that this is "the Commission's only opportunity to require producer disclosure of the costs associated with this gas and their relation to the sale price" of these leases.

In our judgment, the record in this case amply supports the conclusion that the elements of public convenience and necessity are satisfied by Texas Eastern's modified project, without examining into the cost to Texas Eastern of the Rayne Field leases to the extent advocated by the New York Commission. Texas Eastern has not filed an application for a

certificate authorizing the acquisition of the Rayne Field leases and we have no authority to issue such a certificate. However, we have considered all the circumstances pertaining to the company's acquisition of the Rayne Field leases and the effects of this transaction on the need and convenience of the public proposed to be served, including the extent and accessibility of this gas supply; the benefits thereof in enabling Texas Eastern to meet consumer demands; the terms and conditions of the lease sale and purchase agreements including the price to Texas Eastern of the gas thereunder; the claimed savings accruing to Texas Eastern from acquiring the leases rather than purchasing the gas under gas purchase contracts; and the other factors present here. And we conclude that the company's modified project, as it would include and rely on the acquisition of the Rayne Field leases, is required by the public convenience and necessity and otherwise meets the requirements of Section 7(e) of the Act.

First summarizing briefly the arrangement under which Texas Eastern would purchase the Rayne Field leases, the pertinent agreements are contained in Exhibit M-14, *et*

seq., in the reopened proceedings. Louisiana Gas Corporation, a Delaware corporation which Texas Eastern caused to be formed for the purpose, is to acquire from Continental, *et al.*, under a Lease Sale Agreement dated December 4, 1958, between these parties (Exh. M-14 I), all the oil, gas and mineral leases, the surface leases, options and rights-of-way, together with all wells and related lease and well equipment (surface and subsurface), gathering and flow lines, etc., owned by Continental, *et al.*, in the Rayne Field. Continental, *et al.*, will convey its rights in the leases under the terms of the Assignment and Conveyance (Exh. M-14 1), at the time the four conditions set out in Exhibit M-14 I, page 1, are met or waived.[5] At that time Louisiana Gas will pay to Continental, *et al.*, the sum of $12,420,500 in cash and will simultaneously make 16 serial promissory notes to each of the sellers payable over a 16-year period in the total amount of $121,975,200 as the balance of the purchase price for the leases (Exh. M-21). The notes will be secured by an Act of Mortgage and Pledge (Exh. M-20), which will be executed by Louisiana Gas Corporation to each of the sellers to secure

[5] These conditions require (1) approval by Louisiana Gas Corporation of Continental, *et al.'s* title to the leasehold interests; (2) receipt by Continental, *et al.* from the Internal Revenue Service of a ruling in writing that the gain from the sale of the leasehold interests will be considered a gain from the sale of a capital asset held more than six months under Section 1231 of the Internal Revenue Code of 1954; (3) issuance by the Federal Power Commission of certificates, satisfactory to Continental, *et al.* and Louisiana Gas Corporation, necessary to enable the taking of Louisiana Gas Corporation's gas from the Rayne Field and transporting it to market; and (4) the securing by Continental, *et al.* of the dismissal of their certificate applications filed with the Commission for the sale of gas to Texas Eastern as proposed in the earlier proceedings.

It appears that of these conditions, the only ones remaining to be met are (3) with respect to the four producers and (4) with respect to Continental alone.

the payment of the notes. Continental, *et al.*, will retain a production payment out of the liquids produced with the gas and will also reserve the leasehold rights as to oil and deeper gas production.[6]

By the terms of the Lease Purchase Agreement (Exh. M-14), Louisiana Gas will in turn assign and convey the leaseholds and other interests it acquires from Continental, *et al.*, to Texas Eastern for a cash consideration of $12,420,500 payable at the time of closing. In the Form of Conveyance from Louisiana Gas to Texas Eastern (Exh. M-14 II), it is provided that the properties and interests acquired by Louisiana Gas from Continental, *et al.*, will be conveyed to Texas Eastern subject to (a) the reservations, terms and provisions of the Assignment and Conveyance from Continental, *et al.*, to Louisiana Gas, and (b) the Acts of Mortgage and Pledge covering the properties and interests conveyed, executed by Louisiana Gas to secure Continental, *et al.*, in the payment of the promissory notes in the principal sum of $121,975,200.[7] The conveyance to

[6] The pertinent provisions of the agreement as to these reserved rights are as follows (Exh. M-14 1): All leasehold rights below the Nodosaria "A" Sand (which is the deepest known productive sand), and all leasehold rights to the oil and other minerals, except gas and condensate, are reserved by Continental, *et al.* (2) The production payment reserved by Continental, *et al.*, covers the separator liquids and natural gas liquids and is owned and payable in the proportions which Continental, *et al.*, own in the leasehold rights which are to be conveyed. (3) Texas Eastern will be entitled to deduct from the production payment an amount sufficient to recover the cost of producing and operating the leasehold rights, gathering lines and separator facilities and all taxes levied against the separator liquids plus a fixed sum of $4,000 per month. The production payment will continue in effect until the gas produced and saved equals 613,406,770 Mcf measured after the condensate has been removed. Thereafter the production payment will cease and Texas Eastern will be entitled to retain the full amount of the proceeds from the sale of the liquids.

[7] Texas Eastern will also pay an estimated $46,669,300 for the royalty and minority interest portion of the leases at an assumed average price of 22.6 cents per Mcf of gas.

Texas Eastern will be subject to the obligation of the promissory notes, the Acts of Mortgage and Pledge securing the payment thereof and a Vendor's Lien and Privilege of Continental *et al.* However, it is expressly provided that Texas Eastern does not assume any personal liability on the notes or agree to pay any deficiency in the event of foreclosure.

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From the point of view of adequacy of gas supply, we find that with the additions Texas Eastern proposes, including those referred to in the examiner's decision, the company's gas supply will be reasonably adequate in reserves and deliverability to support the service proposed and the demands on the company's system.

The Rayne Field leases alone are extremely important and desirable additions to the company's gas supply. The Rayne Field, with recoverable reserves estimated at 988,771,000 Mcf of gas, contains one of the largest single reserves in southern Louisiana. Further, there was evidence of possible additional reserves in untested sands covered by the lease rights to be acquired by the company. Thus there is a good probability that the unit cost of gas to Texas Eastern from the Rayne Field reserves will be even less than the cost computed by the company on the record herein, as discussed below, with consequent additional benefits to the consumer.

Furthermore, the leases are reasonably convenient to Texas Eastern's pipeline, the Rayne Field being only some 22 miles south of Texas Eastern's 30-inch Beaumont to Kosciusko tie line. Thus the company will be able to connect this major gas reserve to its system for a relatively small amount, as contrasted with the many millions of dollars of capital costs involved in laying laterals to the offshore and bay water locations of the only comparable un-

committed gas reserves in Louisiana. Moreover, deliveries can commence as soon as this connecting line is constructed.

In addition, in considering Texas Eastern's modified project, the desires and needs of the company's customers must be kept in mind, as well as the effects on them of the modifications proposed. Texas Eastern is no longer relying on the gas purchase contracts with the producers which were formerly available to it, and on this record, if the Rayne Field gas is to be made available to Texas Eastern's system, it will be on the basis of the lease acquisition agreements which underlie the modified project. As discussed hereinabove, there is a market demand for the gas Texas Eastern proposes to sell herein. The sales by Texas Eastern to its eleven distributing company customers will be made under longe-term service agreements and firm rate schedules. Indeed, in the reopened hearing, the three customer companies which opposed the original gas purchase contracts did not renew their opposition in the face of Texas Eastern's revised proposal involving purchase of the Rayne Field leases. It would be contrary to the public interest to deny the means for meeting this consumer demand without strong and compelling reasons—reasons which, in our judgment, are lacking in this case.

Further from the point of view of price, Texas Eastern adduced evidence to show that its unit cost of producing the Rayne Field gas will be less than the initial price for gas of 22.6 cents per Mcf under the original sales contracts with the producers. Texas Eastern's cost of producing the gas attributable to the working interests in the leases to be purchased from Continental, *et al.*, exclusive of return and related taxes, would be

approximately 17.15 cents per Mcf, according to this evidence, At an assumed 6¾ percent rate of return plus re-

lated taxes,[8] the average cost to Texas Eastern of such gas would be 19.45 cents per Mcf. Further, employing Texas Eastern's estimate of 22.6 cents per Mcf as the maximum amount it would have to pay for royalty and minority interest gas, Texas Eastern's average cost of producing the Rayne Field gas would be 20.59 cents per Mcf, which is 2.01 cents per Mcf less than the initial price the producers originally proposed.

It is unsound to unqualifiedly characterize this 2.01 cents differential as a "saving" to Texas Eastern over the price for the gas under the original gas purchase contracts with the producers, since there is no basis for assuming that we would have certificated the producer sales at the initial price previously proposed. There is no question, however, but that, as stated above, the gas produced from the Rayne Field leases will be available at a cost of at least 2.01 cents per Mcf less than the initial price under the producer contracts; and the difference will be even more favorable to Texas Eastern if, as is reasonable to assume, the reserves are greater than presently anticipated.

Furthermore, the price Texas Eastern will pay for the Rayne Field leases is fixed for all production from this field, and is not subject to the annual escalations and indeterminate price increases provided for in the gas purchase contracts. The contracts provided for a fixed price escalation of 4 mills per Mcf on November 1 of each year resulting in a terminal contract price of 31.5 cents per Mcf and an average price of 26.6 cents per Mcf. The contract also prescribed redeterminations at the the end of each five-year contract period.[9]

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[8] The company's computations were based on this figure and our use of it here is not to be interpreted as approval of this rate of return or claimed taxes for rate-making purposes. If the figure were reduced, the cost for this gas would be reduced also.

[9] Here too, it cannot be unqualifiedly assumed that we would have allowed such increased rates to become effective.

The public will otherwise benefit from Texas Eastern's acquiring these leases instead of purchasing the gas under the producer sales contracts. For example, Texas Eastern will acquire control over the rate of production, and the minimum take or pay for provisions of the gas purchase contracts will be eliminated, thereby increasing the flexibility of the company's overall pipeline operations. Further, since the purchase of the leases is not a contract to purchase gas, the price paid for the leases cannot have a disruptive effect on area prices by triggering favored nation or price redetermination clauses in Texas Eastern's or any other pipeline company's contracts. Other benefits also exist.

We find no objections to Texas Eastern's acquisition of the Rayne Field leases of such materiality as to offset the public benefit thereof and justify denial of Texas Eastern's project in this proceeding. Needless to say, a large number of natural-gas companies rely to a considerable extent for their supplies of gas on company-owned reserves, and the manner in which Texas Eastern's arrangements for the purchase of the leases were consummated is not unique in the gas and oil business, Texas Eastern's primary reason for handling the arrangements through an intermediary corporation, Louisiana Gas Corporation, was so it would not have any liability for the amount of the notes on its books. There was no evidence or implication that the negotiations leading to the lease purchase and sale agreements were anything but arm's-length and we find that they were arrived at on the basis of arm'-length bargaining. Weighing together all the elements of the public convenience and necessity, we find that the facts of this case justify the issuance of a certificate authorizing the modified project proposed herein by Texas Eastern, and that the objections of the New York Commission should be denied.

Economic feasibility.—Texas Eastern supported the feasibility of its project at the initial hearing by evidence showing estimated rates of return to the company for the first three years of service after the proposed facilities are constructed, assuming that the facilities would be in operation on September 1, 1958. Although Texas Eastern's computations show rates of return of 4.91 percent, 4.85 percent and 4.56 percent for the years 1959, 1960 and 1961, respectively, on a systemwide basis, these rates of return relate not solely to the facilities proposed in the subject dockets but rather to the entire system, including the additions proposed herein. The $49,088,000 investment in pipeline facilities proposed herein are a relatively small part of Texas Eastern's plant investment of $740,106,000 at the end of 1958, and would not of themselves cause a disproportionate reduction in the overall system rate of return. Texas Eastern also adduced evidence indicating that if the proposed rates in its rate increase application, Docket No. G-12706, were applied to the entire system sales, including those proposed herein the resulting rates of return would be 6.43 percent, 6.41 percent and 6.13 percent for the years 1959, 1960 and 1961. On the evidence of record, we conclude that the modified project is economically feasible, although this conclusion is not to be interpreted as approval of the rates proposed by Texas Eastern in Docket No. G-12706.

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Other matters.—In the light of the foregoing, all portions of the presiding examiner's decision issued April 15, 1958, relating to the certificate applications of Continental, Marr, Sun and General Crude, except for the findings respecting gas supply, are moot and should not be adopted by the Commission; otherwise the said decision of the examiner as herein modified should be adopted by the Commission. Likewise, the exceptions, appeals, motions and requests herein, relating to the aforesaid portions of the

examiner's decision and to the said certificate applications, are also moot and all such should be dismissed. For the reasons hereinabove stated, we shall deny the request of the New York Public Service Commission that these proceedings be remanded to the examiner for further evidence.

Continental filed a notice of withdrawal of its application for a certificate, conditioned upon the Commission's granting a certificate to Texas Eastern as applied for in Texas Eastern's amended and supplemented application. The notice recited that Continental had executed and delivered a contract of sale to Texas Eastern wherein Continental agreed to assign its leasehold rights in the leases in the Rayne Field formerly dedicated to the gas purchase contract subject to the receipt by Texas Eastern of a certificate which would nullify the gas purchase contract. In view of the certification herein of Texas Eastern's modified project, Continental should be permitted to withdraw its certificate application in Docket No. G-12432.

The Commission further finds:

(1) Texas Eastern Transmission Corporation is a Delaware corporation having its principal place of business in Shreveport, Louisiana, and is a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The modified facilties proposed to be constructed and operated by Texas Eastern, as described hereinabove, in the record in this case, and in the company's applications, as amended, are to be used in the transportation and sale of natural gas in interstate commerce for resale, subject to the jurisdiction of the Commission; and the construction and operation thereof, and the sales of gas proposed by Texas Eastern by means thereof, are subject to subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Conformable to the authorization granted herein, Texas Eastern is able and willing properly to do the acts

and perform the service referred to in paragraph (2) above, and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

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(4) The construction and operation by Texas Eastern of the facilities and the rendition of the sales referred to in paragraph (2) above is required by the public convenience and necessity, and a certificate of public convenience and necessity thereof should be issued as hereinafter ordered and conditioned.

(5) The public convenience and necessity require that the general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4) and (e) of Section 157.20 of the Commission's regulations under the Natural Gas Act should attach to the certificate hereinafter issued to Texas Eastern and to the exercise of the rights granted thereunder, and that the time within which construction of the facilities authorized by this order shall be completed should be fixed at six months from the date of issuance of this opinion.

(6) The presiding examiner's initial decision issued herein on April 15, 1958, as hereinabove modified, should be adopted by the Commission. All arguments, objections and exceptions not hereinabove discussed have been considered but are without substantial support in fact or reasonable basis in law and should be denied.

The Commission orders:

(A) A certificate of public convenience and necessity is hereby issued authorizing Texas Eastern Transmission Corporation to construct and operate the facilities proposed in the applications filed in Docket Nos. G-12446 and G-12447 herein, as amended and modified; and to sell and deliver to existing customers the additional volumes of

gas proposed in these proceedings in the maximum amount of 101,660 Mcf per day (14.73 psia), as follows:

Customer	*Mcf per day*
Algonquin Gas Transmission Company	10,200
The Columbia Gas System Companies	25,807
The Consolidated Natural Gas Companies	40,393
Equitable Gas Company	14,280
New Jersey Natural Gas Company	5,100
United Natural Gas Company	1,632
Elizabethtown Consolidated Gas Company	1,121
Illinois Electric & Gas Company	1,020
Village of Norris City, Illinois	102
City of Somerset, Kentucky	1,530
Tennessee Gas Company	474

(B) Permission is hereby granted to Continental Oil Company to withdraw its certificate application in Docket No. G-12432.

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(C) The general terms and conditions set forth in paragraphs (a), (b), (c)(3), (c)(4), and (e) of Section 157.20 of the Commission's Regulations under the Natural Gas Act shall attach to the issuance of the certificate granted herein and to the exercise of the rights granted thereunder.

(D) The time within the facilities hereby authorized shall be constructed and placed in actual operation is fixed at six months from the date of issuance of this opinion.

(E) The presiding examiner's initial decision issued herein on April 15, 1958, is hereby modified as hereinabove set forth, and as so modified is adopted by the Commission, to constitute with this opinion the Commission's decision in these proceedings. Except to the extent hereinabove granted, the exceptions to that decision and the other requests still before us in these proceedings are hereby de-

nied; and the matters and issues hereinabove found to be moot are hereby dismissed.

By the Commission.

/s/ JOSEPH H. GUTRIDE,
Secretary.

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Docketed July 23, 1959

BEFORE THE

FEDERAL POWER COMMISSION

In the Matters of	Docket Nos.
Texas Eastern Transmission Corporation	G-12446
Texas Eastern Transmission Corporation (formerly Texas Eastern Penn-Jersey Transmission Corporation)	G-12447
Continental Oil Company	G-12432

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Application for Rehearing of Opinion 322

* * * * * * * * * * *

On June 22, 1959, the Supreme Court of the United States held that purchases of natural gas by Tennessee Gas Transmission Company at initial prices of 22.4c per Mcf were out of line and, not having been justified by demonstration or producer need, were, accordingly, not in the public interest and unlawful. *Inter alia*, the Court observed that the availability of Section 5 proceedings to establish the proper price level ultimately, afforded no substitute for the requisite instant producer demonstration of the propriety of his initial price—but did provide the means of

perpetually keeping proper initial certification in line price-wise*

On June 23, this Commission unconditionally certificated a project which, in its practical effect on Texas Eastern

and ultimate consumers served through its facilities, is precisely the same as though that company had purchased gas at a totally unjustified 22.9 per Mcf price.* coupled with a perpetual guarantee against any future Section 5 adjustment! The explanation for the incorrect decision in this proceeding may lie solely in the fact that at the time Opinion 322 was written the Commission had not had the benefit of guidance of the Supreme Court's decision.

In any event, the certification is erroneous, improper and unlawful and must be rescinded.

ARGUMENT

I.

Opinion 322 Correctly Holds a Pipeline Project Depending on Indirect Gas Purchases Subject to the Same Standards of Public Convenience and Necessity as One Relying on Comparable Direct Purchases.

The Commission does not appear to have been led astray by the fact that the project before it involves a transfer of gas through acquisition of leases rather than through the more customary device of direct gas sale and purchase. Opinion 322 makes it perfectly clear that the determination of public convenience and necessity in respect of such a project is essentially no different from the same deter-

* *Atlantic Refining Co., et al. v Pub. Serv. Comm. of New York, et al.*, 27 Law Week 4460 (June 22, 1959).

* 20.59c per Mcf "base" cost of acquisition and production plus 2.3c per Mcf tax liability, rounded to 22.9c per Mcf.

mination in respect of a project depending on ordinary gas purchases.

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For example, although the Commission correctly observes that "Texas Eastern has not filed an application for a certificate authorizing the acquisition of the Rayne Field leases and we have no authority to issue such a certificate" (pp. 5-6), Opinion 322 quickly removes any incorrect inferences that might be drawn from this observation. It clearly states that the "basic question" for the Commission's decision in this proceeding "is whether Texas Eastern's project . . . *including reliance on Texas Eastern's acquisition of the Rayne Field leases . . . is required by public convenience and necessity and otherwise meets the requirements of Section 7(e) of the Act*" (p. 1, emphasis supplied). Obviously the answer to that question can be no different whether Texas Eastern's project includes reliance on its acquisition of Rayne Field gas through leases, comparable direct sales or any other means. Indeed, the statement of the question itself puts to rest any assumption that the Commission's lack of authority over gas lease acquisitions as such, would prevent its summary rejection of a Texas Eastern project relying on acquisition of the Rayne Field leases at say $281,065,000 rather than at the present proposed figure of $181,065.000.

We approve the Commission's approach to the problem of gas transfers through the acquisition of leaseholds. We agree that public convenience and necessity is not concerned with the form of gas transfers but only with whether the project, as tendered, is in the public interest, A project which

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would not be in the public interest if the result of a direct gas purchase, can be no more so if the product of some other arrangement.

II.

EVEN UNDER PRE-CATCO STANDARDS COMPARISON OF A PROPOSED PROJECT WITH SOME OTHER UNCERTIFIED PROJECT IS IRRELEVANT TO THE DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY.

How ever, although the issue is no longer important, we do feel compelled to put on record our objection to one aspect of the Commission's decision—its reliance, in considering public convenience and necessity, upon the fact that the present proposal represents an improvement, in terms of cost to Texas Eastern and other features, over the superseded proposals tendered for its authorization in 1957 (pp. 8-10).

The practice of justifying a proposed price by showing it is lower than some other price which might have been asked or formerly was asked, but which itself has never been shown to be required by public convenience and necessity, is so thoroughly inimical to the public interest as to be

forbidden by the Natural Gas Act.* We can imagine no more efficient deterrent to responsible initial pricing practices by natural gas companies than encouraging belief that the key to unconditional certification lies in demand-

* For reasons that are obvious, the Commission has expressly and repeatedly disavowed any intimation that it is here finding, or would or could have found, the 1957 proposals to be required by public convenience and necessity:

> "It is unsound to unqualifiedly characterize this 2.01 cents differential as a 'saving' to Texas Eastern over the price for the gas under the original gas purchase contracts with the producers, *since there is no basis for assuming that we would have certificated the producer sales at the initial price previously proposed*" (p. 9; emphasis supplied).
>
> "Here too, it cannot be unqualifiedly assumed that we would have allowed such increased rates to become effective" (p. 9, ftn. 9).

ing prices even more exorbitant than those for which authorization is ultimately sought.

Moreover, although we can understand the Commission's enthusiasm for any *reduction* in price achieved through the operation of "arm's-length negotiation," we fear it may have overlooked the fact that ultimate consumers have been made to pay very dearly for the reduction achieved here—by sacrifice of future adjustment of the producer's price through Section 5 proceedings. This significant offset to Texas Eastern's "savings" has not been considered worthy of mention in Opinion 322. Yet Section 5 proceedings, for all their inefficiences and delays are consumers' sole assurance of ultimately

obtaining just and reasonable producer charges. That assurance may not be lightly traded away without good and sufficient consideration.

III.

TEXAS EASTERN'S PROPOSED PROJECT MAY NOT BE CERTIFICATED BECAUSE A COMPARABLE DIRECT GAS PURCHASE COULD NOT BE AUTHORIZED ON THE INSTANT RECORD.

As the Commission itself has tacitly acknowledged the "basic question" posed by Opinion 322 (i.e., whether Texas Eastern's project, including reliance on its acquisition of the Rayne Field leases, is required by public convenience and necessity) can be answered no differently than if Texas Eastern's project relied on some other form of gas acquisition at the same price and on comparable terms. Therefore, the answer to that question is now entirely dependent on whether a comparable direct gas purchase by Texas Eastern at a cost of 22.9c per Mcf could be unconditionally certified on this record under the principles established by the Supreme Court's CATCO decision. Manifestly, it could not.

The present cost to Texas Eastern of acquiring and producing the Rayne Field gas (22.9c per Mcf) is even higher than the 22.4c found unlawful for purchases by Tennessee. It is nearly 65% higher than the maximum purchase price presently being paid by Texas Eastern in Louisiana. It is not merely subject to delay in adjustment to a just and reasonable level;

it is completely immune to such adjustment.

The record provides an adequate explanation for a portion of that cost—the portion to be incurred by Texas Eastern as an incident to its own production of the gas. It provides no explanation whatever for the bulk of the cost—i.e., the amount to be received by the producers—except as the product of arm's-length negotiation. We do not question the presence of unique technical advantages to Texas Eastern under the present transaction. However, the relation of those advantages to the $181,065,000 price to be paid by Texas Eastern to the producers has not been established by the evidence—except, again, as the product of arm's-length negotiation. Such evidence, we respectfully submit, is no longer a satisfactory explanation for a price of this magnitude even if subject to Section 5 revision. It is grossly inadequate when that protection has been forfeited.

If indirect natural gas purchases (through pipeline acquisitions of leases) could be made on records which would be inadequate to support comparable direct purchases at the same price, the Supreme Court's CATCO decision would become a dead letter before the ink has had a chance to dry on its pages. We are certain that result will not be permitted to come about. Decisions of the Supreme Court may not be taken so lightly or circumvented so easily. The Commission has now had an opportunity,

lacking on June 23, to give the Supreme Court's decision the thoughtful examination and attention it requires. It remains only for the Commission to apply the Court's reasoning and principles to the instant proceeding.

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CONCLUSION

The record in the proceeding is utterly devoid of proof that Texas Eastern's project, depending on acquisition of the Rayne Field leases at $181,065,000 and resulting in a cost of production to it of 22.9c per Mcf, is required by the present or future public convenience and necessity. The only evidence in support of the $181,065,000 payment is testimony as to its arm's-length negotiation. Inasmuch as that evidence would be inadequate to sustain unconditional certification of a comparable direct sale and purchase by Texas Eastern at 22.9c per Mcf, it is equally inadequate to sustain unconditional certification of a project which would subject the purchaser to an identical burden.

In our initial brief filed herein on April 17, 1959, we requested the Commission to remand the proceeding to the Presiding Examiner to ascertain the price, for the acquisition of the Rayne Field leaseholds, which would warrant the determination that public convenience and necessity requires authorization of Texas Eastern's project. In Opinion 322 the Commission rejected that request on the ground that "the record in this case amply supports the conclusion that the elements of public convenince and necessity are satisfied by Texas Eastern's project "without such a determination (p. 5). Presently applicable considerations, however, show that the record does not support the Commission's conclusion, amply or at all.

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We have earnestly endeavored to evolve some alternative lawful disposition for this proceeding. Were it possible to

assign a monetary value to loss of consumers' rights to just and reasonable producer charges, we would request the Commission to locate an appropriate initial per Mcf price for a comparable direct sale of Rayne Field gas (using Commissioner Console's "dominant prevailing price method" but excluding consideration of the CATCO sales and others subsequent to their execution at equal or higher prices) and to translate that price into a lump sum, then deduct from that figure the costs which will be incurred by Texas Eastern as a result of its own production of the gas and an additional amount to compensate consumers for loss of Section 5 protection and, on that basis, to determine an appropriate payment for Texas Eastern's acquisition of the Rayne Field leases. While the mechanics of finding an appropriate initial price would not present a difficult problem and the cost to Texas Eastern of producing the gas itself could be derived from this record, we are, unfortunately, unable even to undertake an estimate of the value of the consumer's sacrifice of their rights to just and reasonable producer charges—and doubt that the Commission is either.

Therefore, we are compelled to repeat our original request and to ask the Commission to reconsider its denial in

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the light of the present status of the law.

Respectfully submitted,

Dated: July 22, 1969

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK

By KENT H. BROWN
Counsel
55 Elk Street
Albany 1, New York

BARBARA M. SUCHOW
Of Counsel

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State of New York }
County of New York } ss:

Barbara M. Suchow, being duly sworn, deposes and says she is Assistant Counsel to the Public Service Commission of the State of New York; that she has prepared and is authorized to execute and file the foregoing document; that she knows the contents thereof; and that all statements and matters set forth therein are true and correct to the best of her knowledge, information and belief.

BARBARA M. SUCHOW

Subscribed and sworn to before me this 22nd day of July, 1959.

MARGARET W. RAICHERT

Notary Public, State of New York
No. 41-3197400—Queens Co.

Term Expires March 30, 1961

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CERTIFICATE OF SERVICE

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(Docketed Aug. 21, 1959)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman, William R. Connole, and John B. Hussey.

In the Matters of	Docket Nos.
Texas Eastern Transmission Corporation	G-12446
Texas Eastern Transmission Corporation (formerly Texas Eastern Penn-Jersey Transmission Corporation)	G-12447
Continental Oil Company	G-12432

Order Denying Application for Rehearing

(Issued August 21, 1959)

On July 23, 1959, the Public Service Commission of the State of New York (New York Commission) filed an application for rehearing of the Commission's Opinion No. 322 and accompanying order issued June 23, 1959, granting a certificate of public convenience and necessity to Texas Eastern Transmission Corporation (Texas Eastern) under subsection (c) and (e) of Section 7 of the Natural Gas Act (Act) authorizing the construction and operation of certain facilities and the rendition of the sales of natural gas to customers as set forth in that opinion.

We have considered the assignments of error and grounds for rehearing set forth in the New York Commission's application for rehearing, and have reconsidered our Opinion No. 322 and accompanying order in view of the Supreme Court's *Catco* decision (*Atlantic Refining Co.* v. *Public Service Commission of New York*, 79 Sup. Ct. 1246, June 22, 1959), and the decision of the Court of Appeals

for the Third Circuit in the *Transco* case (*United Gas Improvement Co.* v. *F.P.C.*, Nos. 12797 and 12805, —— F. 2d ——, (August 4, 1959), and we can find no reason for granting rehearing or disturbing the original opinion and order.

The Commission finds:

The assignments of errors and grounds for hearing set forth in the above-described application for rehearing filed herein by the New York Commission present no facts or principles of law which were not considered by the Commission when it issued its Opinion No. 322 and accompanying order on June 19, 1959, or which having now been considered warrant any change or modification of the said opinion and order.

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The Commission orders:

The application for hearing filed by the Public Service Commission of the State of New York on July 23, 1959, in the above-entitled proceeding, is hereby denied.

By the Commission: Commissioner Connole dissenting, filed a separate statement.

MICHAEL J. FARRELL,
Acting Secretary.

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In the Matters of
Texas Eastern Transmission Corporation, et al.

Docket No. G-12446, et al.

(Issued August 21, 1959)

CONNOLE, Commissioner, *dissenting:*

Opinion No. 322 in this proceeding approves the acquisition of natural gas for resale in interstate commerce by a pipeline company under conditions resulting in a cost of produced gas of 22.89c per Mcf. A proposal, such as this, "requires a most careful scrutiny and responsible reaction ***." *The Atlantic Refining Co., et al.* v. *P.S.C. of N. Y.*, 360 U. S. 378, ————. Clearly, the responsible reaction contemplated by the Supreme Court amounts to more than an announcement of the conclusion which the Commission sets out to determine.

In this case the need for a responsible reaction has been made more abundantly obvious by the mounting resistance to increased prices at the consumer end of Texas Eastern's pipeline and the increasingly inhibiting effect of competition from other fuels. This competition, of course, affects the marginal sale, the loss of which exerts a tremendous leverage on the rates of less price-sensitive sales.[1]

Against this background the approval of a cost of production for natural gas at a level at high as 22.89¢ per Mcf, including taxes, should only be forthcoming if the Commission is certain that such a price level is required by the public convenience and necessity or is just and reasonable within the meaning of Sections 4 or 5 of the Act.

The reasons advanced in Opinion 322 in support of the

[1] Algonquin Gas Transmission Company, for example, has recently filed a $4,061,000 or 12% rate increase. This directly affects 25 wholesale customers in one of the most price sensitive fuel markets in the nation. Algonquin is a wholesale customer of Texas Eastern.

conclusion that the proposel advanced by Texas Eastern is required by the public convenience and necessity are intended to explain why so high a cost is justified even though it is higher than only the very highest and smallest fraction of new contracts made in the area and even though

the nature of the transactions permanently removes that cost from regulatory review and virtually commits us to allowing it as a reasonable operating expense in any rate making proceeding. There can be no question that elimination of take-or-pay-for clauses, the elimination of price escalations or indeterminate price increases and the increasing flexibility in the pipeline's operations all are plus factors. Indeed, they would be controlling in my judgment were it not for the more pervading consideration that no matter how it is disguised, the approval of this transaction for all practical purposes (if the gas-buying business is anything, it is a practical business) will be considered as approval of a cost or a price of 22.89¢.

It is immaterial, it seems to me, that the cost of production might be lower than 22.89¢ ultimately. This fortuitous circumstance would be a consummation devoutly to be wished indeed. The important thing, however, is that we have approved the transaction on the assumption that it could be as high as 22.89¢. While it may be true that "the price paid for the leases cannot have a disruptive effect on area price by triggering favored-nation or price redetermination clauses," it will have at least an equally disruptive effect on area prices by putting another solid plank under the floor for gas prices in South Louisiana that is growing discouragingly firmer with each decision involving prices in that area. In other words, this transaction will just as certainly operate to fix the cost of purchased gas in South Louisiana for initial contracts as it would be if the original proposal made by the producers and Texas East-

ern were approved. Perhaps the rate level is not identical but the effect of the Commission's approval of this rate level is the same. After all, the approval of the cost of produced gas at 22.89¢ does not differ materially from the approval of a cost of purchased gas at 28.89¢.

If there is any doubt of this conclusion, consider the context in which the application was made.

We are asked specifically to approve not only the construction and the operation of the facilities required and the sales proposed, but, indeed, the cost of acquiring the reserves as well. The care and attention given to the amount of moneys that will change hands in this transaction, the resultant estimated cost of produced gas, and, indeed, the approval of the capitalization of so much of the cost price as would be capitalized can be interpreted logically only as the approval of a proposed transaction contemplating a cost of purchased gas of 22.89¢.

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Applying to this transaction, then, the principles which the Supreme Court has so plainly directed us to apply and looking at the record for evidence whether the price is required by the public convenience and necessity, I am unable to conclude that this transaction, desirable though it may be in some particulars, can be said to be required by the public convenience and necessity under the terms and under the conditions on which it is proposed to us. It must be remembered that even in circumstances where the Commission has issued certificates of public convenience and necessity authorizing the sales of gas at a price as high or higher than approved here, we still have some handle on the matter through the operation of Section 5 of the Act. Even this small consolation is absent in this case. It would be far more desirable, in my judgment, for the applicants here to submit their proposal on the same basis as other applicants than to attempt to circumvent

regulation and then to ask for specific Commission approval of the result. Indeed, it would be better for the Commission to say nothing at all about prices and approve only the construction, operation and sale and to leave the question of price for determination after the principles of pricing have become firm.

The simple truth is that by the device of this sale, producers have succeeded in obtaining the same cash compensation in the long run as they would have obtained under the original transaction, Texas Eastern has committed itself to a probable cost of 22.89¢ per Mcf and we have specifically approved the whole thing—permanently—with no possibility that the Commission will ever be able to review it. I do not believe it is in the public interest to permit the uncomfortable thrust of alleged insatiable demand to goad us into approving any such permanent circumvention of the Natural Gas Act. Under these conditions, I can see no obstacle to any pipeline or any group of producers entering into such a transaction. Then, as here, all the advantages will be trotted before us in justification of the transaction. But then, just as certainly as here, we would be abdicating our responsibility to approve the proposal unless we knew whether the resultant cost is within the bounds either of reasonableness (since it would be a permanent cost) or at least of public convenience and necessity. I do not believe we ought to do anything that would make possible such a circumvention of our rate making responsibilities under the Act.

For these reasons, I am unable to agree with this order which denies reconsideration of the earlier Opinion 322.

WILLIAM R. CONNOLE,
Commissioner

1802

Washington, D. C.
Monday, October 23, 1961

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1805

PROCEEDINGS

Presiding Examiner: Gentlemen, the hearing will come to order.

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By an order issued on July 14, 1961, the Commission reopened the record in this proceeding to afford Texas Eastern the opportunity to make the showing contemplated by the Circuit Court of Appeals. In its July 14, 1961 order, the Commission defined but did not necessarily limit the issues and procedures to be followed.

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1807

E. A. Olson, Jr.

was called as a witness, being first duly sworn, and testified as follows:

Direct Examination

By Mr. Deakins:

Q. Dr. Olson, would you state your name, address, and position of employment for the record, please? A. My name is E. A. Olson, Jr. My address is 2625

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Daniels Avenue, Dallas, Texas. I am a vice president of the firm of DeGolyer and MacNaughton, Dallas, Texas.

Q. What is the business of the firm of DeGolyer and

MacNaughton? A. The firm of DeGolyer and MacNaughton is a corporation and has as its principal business the estimation of petroleum reserves, the appraisal of the availability of such reserves and their value, the planning and, in certain cases, the conduct of geological exploration, and petroleum exploration for many individuals and companies. A part of the work done by our firm is in connection with the appraisal of oil and gas properties which are pledged as collateral for loans obtained from banks, insurance companies, and other lending agencies. Additional work by the firm includes the preparation of estimates of the oil and gas reserves and the availability of these reserves for submission to the Federal Power Commission and Securities and Exchange Commission.

* * * * * * * * * * * *

By Mr. Deakins:

Q. Please state your educational background and experience in the industry. A. I hold a Bachelor of Science Degree in Petroleum Engineering from the Agricultural and Mechanical College of

Texas. I have been employed in various phases of the oil business during the past 18 years, with the exception of three years of active duty in the Combat Engineer Corps of the United States Army during World War II. After my release from the Army I was employed by Texas Company and was placed in their reservoir engineering department in New Orleans, Louisiana. This work consisted of various phases of reservoir engineering and geology. I have remained in this department for 3½ years, after which time I joined the firm of DeGolyer and MacNaughton. I have been with this firm since 1949, and have worked primarily in the estimation of the extent, value, and avail-

ability of oil and gas reserves, particularly in south Louisiana.

I am a Registered Professional Engineer in the States of Louisiana and Texas, and a member of the Society of Petroleum Engineers of the American Institute of Mining, Metallurgical and Petroleum Engineers. I have previously testified before the Federal Power Commission in Dockets Nos. G-12446, G-15394, G-18338, and G-11024.

Mr. Deakins: Mr. Examiner, I would like to have marked for the purpose of identification an exhibit entitled "Estimated Reserves and Availability of Residue Gas, Condensate, and Plant Liquids of Texas Eastern Transmission Corporation in Rayne Field, Acadia Parish, Louisiana as of January 1, 1961."

Mr. Examiner, we have marked this exhibit as X-2 in ac-

cordance with some requests of the staff of the Commission. We have furnished that information to them. If that is agreeable with the Examiner, we can continue with those identifications.

Presiding Examiner: Are those numbers carried throughout the exhibit?

Mr. Deakins: Yes, on the pages. I might advise the Examiner of this fact: In the earlier phases of this proceeding the exhibits were numbered with Arabic numerals commencing with 1. We tried this case twice before and then when we came back we identified the exhibits as M-1, M-2, through M-14, as I recall it. It doesn't make a lot of difference to us. It would be a little easier for our presentation to call these X-2 and thereafter.

Mr. Lewnes: Mr. Examiner, the formal files indicate that the last formal exhibit in these proceedings was M-21.

Presiding Examiner: Off the record.

(Discussion off the record)

Presiding Examiner: Back on the record.
It will be marked X-2 for identification.

(Whereupon the document referred to was marked for identification as Exhibit X2.)

By Mr. Deakins:

Q. Handing you what has been marked for identification, for the purposes of identification, Exhibit X-2, please state

whether you prepared part of that exhibit for presentation in evidence in this case. A. Yes, I have. Our firm was commissioned by Texas Eastern Transmission Corporation to prepare estimates of the gas condensate and plant liquids reserves in the Rayne field, Acadia Parish, Louisiana.

Q. Have you previously prepared an exhibit in connection with your earlier testimony in these proceedings? A. Yes, I prepared an estimate of the reserves of natural gas in the Rayne Field as of January 1, 1959, which was reduced to exhibit form and presented as Exhibit M-13 in these proceedings, and I also testified with reference to the reserves in the Rayne Field, as shown by that exhibit. And as a matter of fact, it was those reserves which the Commission found to be the reserves in the Rayne Field in the certificate which was issued previously.

Q. Since the preparation of Exhibit M-13, have you kept abreast of the development of the Rayne Field until the present time? A. I have.

Q. State what changes, if any, have occurred in the field since your exhibit of 1959 was prepared. A. During the period between 1959 and 1961 there have been four additional wells drilled, one prior to the time when Texas Eastern acquired the field in July, 1959, and three since

that time. These wells have not materially changed the field in any respect. While data made available from these wells has resulted in certain alterations in our interpretations, the overall effect in terms of the total field reserves is negligible.

Q. Has the drilling of any of these wells resulted in proving up any additional reservoirs from your original exhibit? A. Yes, they have.

Q. Now referring you again to Exhibit X-2, please state what it is and whether you prepared any part of it, and if so, what part did you prepare?

A. That part of Exhibit X-2 which I prepared is the tabulation found on page 1, with the exception of the condensate and plant liquids reserves found on lines 28 and 29 of page 1. In addition to that tabulation I also prepared the map shown on pages 3 and 4 of that exhibit.

Q. State what that part of page 1 of Exhibit 2 which you prepared purports to show. A. The tabulation on page 1 of Exhibit X-2 shows the reserves of the Rayne Field by reservoirs involving all the basic data pertinent to these reserves as of January 1, 1961.

Q. Now what do pages 3 and 4 of that exhibit show? A. On pages 3 and 4 of Exhibit X-2 I have shown the productive limits of each proved reservoir in the field and

the acreage which is dedicated to Texas Eastern. In this exhibit we have included two new reservoirs; namely, the Homeseekers D-2 and the Homeseekers D-4. These two reservoirs were not included in the original exhibit as of January 1, 1959.

Q. Have both of those reservoirs been tested? A. No, the Homeseekers D-2 reservoir has been tested and is now producing from two completions. However, the Home-

seekers D-4 sand has not been tested, but we feel that due to the similarity of the electric log characteristics and sand conditions existing in this reservoir, compared with the Homeseekers D-2 reservoir, that this sand should be considered as proved, and as a consequence I have included it in my exhibit.

Q. Of the dedicated reserves in the Rayne field you have shown on line 27 of page 2 of Exhibit M-13, 988,771 MMcf of natural gas. What comparable figure is shown in your Exhibit X-2 on page 1? A. I have shown on line 27 residue gas reserves under column M, the figure 924,678 MMcf, which compares to the figure 988,771 MMcf.

Q. How do you account for the difference in those two figures? A. The difference is accounted for almost entirely by the interim production of 65,396 MMcf.

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Q. What method did you use for estimating the gas reserves in the Rayne Field in 1959? A. The volumetric method.

Q. What method have you used in estimating the reserves as shown by Exhibit X-2? A. I used the same method.

Q. In using the volumetric method, what information did you use and what procedure did you follow in making these estimates? A. In estimating reserves by the volumetric method, structural and isopachous maps first were prepared for each proved reservoir in the field, and were based on all data available; namely, the electric and mico logs. All available core analyses were used to determine the average porosity and interstitial water percentages and permeabilities for each reservoir. In addition, electrical log calculations and charts showing a plot of permeability versus irreducible water were used in determining intersitial water percentages. Measured reservoir prssures and temperatures were used, and where such measurements were not available, temperature and pres-

sure gradient curves were constructed, using data that was available. Reservoir pressures in this field are abnormally high. However, this is a common characteristic for fields of this type in this area, and as a result it is expected that these fields generally will be produced by pres-

sure depletion.

Assuming this field will be depleted through pressure depletion, I have arrived at a recoverable reserve by estimating a reasonable abandonment pressure.

Q. Referring you to page 1 of Exhibit X-2, I take it that the residue gas reserve of 924,678 MMcf is the total reserve available to Texas Eastern. Please state what the term "residue gas" means as you have used it here. A. The term "residue gas," as used in this exhibit, is that gas which is available for sale after having taken into account the combination of losses due to condensation in the reservoir, the extraction of separate or condensate and plant liquids.

Mr. Deakins: I now offer pages 1, 3, and 4 of Exhibit X-2.

Presiding Examiner: The offer will be taken under advisement until the completion of cross-examination of this witness.

Mr. Deakins: I tender the witness for cross-examination.

Mr. Lewnes: Mr. Examiner, I presume that we would proceed along the usual procedures in these proceedings where Texas Eastern would put on all of its witnesses, and at the presentation of its direct case we would make a statement as to whether we would cross-examine immediately or ask for a recess for cross. Consequently, we don't intend to cross-ex-

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amine this witness at this time.

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Mr. Deakins: Mr. Marshall.

Dan L. Marshall

was called as a witness, being first duly sworn, and testified as follows:

Direct Examination

By Mr. Deakins:

Q. Please state your name and address. A. My name is Dan L. Marshall, and my address is 5625 Daniels Avenue, Dallas, Texas.

Q. By whom are you employed and in what capacity? A. I am a Vice President of the firm of DeGolyer and MacNaughton, and employed as a geological and petroleum engineer, having been so employed since June, 1948.

Q. Please state your professional education. A. I received my primary and high school education in the public schools of Louisiana. I was graduated from

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Louisiana State University in August, 1939 with a Bachelor of Science Degree in Petroleum Engineering.

Q. State whether you are a registered professional engineer and of what professional societies you are a member? A. I am a registered professional engineer in the States of Louisiana and Texas. I am a member of the National Society of Professional Engineers, the American Association of Petroleum Geologists, and the Society of Petroleum Engineers of the American Institute of Mining, Metallurgical, and Petroleum Engineers.

In 1946 and 1947 I was a member of the standing subcommittee on secondary recovery of the American Petro-

leum Institute. In 1947 and 1948 I was a member of the production technology committee of the Petroleum Division of the American Institute of Mining and Metallurgical Engineers.

Q. What has been your employment during your adult life? A. In the summer of 1937, I was employed by the Shell Petroleum Corporation as a gauger in a tank farm terminal in Southwest Louisiana. Here my duties were concerned with the details of movement of crude oil from pipelines into tanks and from tanks into barges or ships. In the summer of 1938 I was again employed by Shell Oil Company, Inc., in Texas. My duties consisted of the details concerned with repair and maintenance of surface and subsurface equipment,

assistance to the district exploitation engineer in preparing maps, geological cross-sections, the examinations of cuttings obtained from drilling wells, setting casing and completing wells. Upon graduation I was employed by The Texas Company producing department. Here my work covered practically all phases of drilling and production, including geological and petroleum engineering problems.

From January, 1943, until June 1948, I was in responsible charge under the division petroleum engineer of all company reservoir engineering work in the Louisiana division, which included the east Texas area, Louisiana, Arkansas, Mississippi, and the remainder of the southeastern United States. This work included the formulation of programs to accumulate basic data, interpretation of these data to provide estimates of reserves, and the availability of those reserves, appraisal of individual properties, design of producing programs for multiple-reservoir fields, and appraisal of the various operating methods for a given property or field.

In addition, considerable time was devoted to unitization programs and the operation of fieldwide or reservoirwide units in connection with some form of cycling or pressure maintenance operation. In order to finalize certain of these programs it was necessary for me to appear on numerous occasions as a witness before the Louisiana Department of Conservation and the State Oil and Gas Board of Mississippi.

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In June of 1948 I was employed by the firm of DeGolyer and MacNaughton. From that time to the present my work has dealt with problems in exploration for and exploitation of oil and gas, including appraisal of petroleum prospects, drilling techniques, production problems, estimates of reserves, appraisal of properties for value, both producing and potentially productive, management of properties, management of companies, company exploration and exploitation programs, and problems in gas storage.

The oil and gas properties that have been involved in the foregoing work are located in 13 of the 29 producing States of the United States. In addition, I have performed similar types of work on properties located in Canada, Mexico, Columbia, Brazil, France, Egypt, Saudi Arabia, and the Kuwait Neutral Zone.

During the time from June, 1948 to the present, however, the majority of my attention and work has been devoted to the Gulf Coast area. I have been familiar with the Rayne Field, Acadia Parish, Louisiana, from its discovery in 1953 through its development and production to date.

Q. Have you prepared an estimate of the availability of the reserves of residue gas, condensate, and plant liquids from the various reservoirs in the Rayne Field? A. I have.

Q. Handing you what has been marked for the purposes

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of identification as page 2 of X-2, would you please state what that is and by whom it was prepared?

A. That is an estimate of the reserves of residue gas, condensate, and plant liquids as of January 1, 1961, as shown at lines 28 and 29 on the first page of Exhibit 2, and as shown as estimates of annual production of residue gas, condensate, and plant liquids, and also in total, which was prepared by me.

Q. Please describe this exhibit. A. The exhibit bears a caption marked "Estimated Production" and is in columnar form. The first, column A, is a line number corresponding to the years shown in column B, commencing in 1961 and ending in 1989. The third column shows the quantities of residue gas available through each of those years, and the total in line 30. Column D is the estimate of condensate expressed in barrels, and column E shows the plant liquids expressed in barrels with totals of each shown at the bottom. Column F is self-explanatory.

Q. How did you determine the quantities of residue gas shown to be available in column C on page 2 of Exhibit X-2? A. In reaching these conclusions, studies were made of the volumetric and phase behavior of the reservoir fluids as shown by actual laboratory data, where available, and estimates for those reservoirs for which laboratory data were not avail-

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able. Where available, multi-point back pressure tests, and where not available, a succes[illegible]n of single-point back pressure tests were analyzed, using methods described in a publication by the Railroad Commission of Texas, entitled "Back Pressure Test for Natural Gas Wells, State of Texas." As a result of these studies it was possible to forecast the availability of residue gas from the various reservoirs in the Rayne Field during pressure depletion.

We were instructed by Texas Eastern Transmission Corporation to assume demand for residue gas from the Rayne Field at a rate of 51,100 MMcf per year for 13 years, and to maintain that rate by supplementing well capacity as needed, by anticipating the completion of additional wells during that period, thereafter estimating the production decline as capacity declines with pressure. Well capacities under these conditions are such that the Rayne Field will be depleted in the year 1889.

Q. Inasmuch as the condensate and plant liquids are related, will you please state how you reached the conclusion expressed in columns D and E of page 2 of Exhibit X-2? A. The attendant volumes of separator condensate and liquids to be produced with the estimated volumes of reservoir gas were obtained through a study of the volumetric and phase behavior of the reservoir fluids as laboratory data were available, and estimated for those reservoirs for which no laboratory data were available. The separator yields for the

various reservoirs conform with actual separator yields. Estimates of plant liquids were based on extraction efficiencies used in plant design and adjusted for experience during the first 12 months of plant operation. The total condensate and plant liquids production, as shown on the second page of Exhibit X-2, agree with the estimated reserves shown on the first page of Exhibit X-2.

Q. In connection with your study of the Rayne Field were you asked by Texas Eastern to estimate as a part of the availability study the necessity for the drilling of additional wells in that field in order that Texas Eastern would be able to produce the total quantities of gas and liquids as shown on your exhibit? A. I was.

Q. As a result of this study did you determine whether

or not any additional wells would be required to be drilled? A. I did.

Q. How many? A. Two additional dual completions will be required in the year 1962, one side of each to be used to produce the Homeseekers D-2 sand, the other side of one to be used in the Nodosaria A South, and the other in the Homeseekers D-4 sand. In 1971, an additional well will be needed to be completed in the Nodosaria A. South and the Homeseekers E sands. In 1972, one additional well to be drilled or completed also in the

Nodosaria A South and the Homeseekers E sands.

Q. Why do you determine it necessary for these wells to be drilled in the years you have indicated? A. In order to complete development of the field, in the first instance, two additional undrilled locations will be required to be drilled in order that Texas Eastern recover from the Homeseekers D-2 sand the gas which is dedicated to it. A completion in the Homeseekers D-4 sand will allow that sand to be brought into production immediately and the additional completion in the Nodosaria A South, while it is not immediately needed, will provide standby capacity as needed during the period from 1962 to 1971.

The aggregate capacity of all of the wells in the Rayne Field should be sufficient to meet the desired take from the field until 1972. By that time the pressure in the various reservoirs will have declined to the extent that it will have reduced the well capacity to the point where an additional two completions would be required by the end of 1971 to meet the desired daily take.

The reservoir pressures will continue to decline with production, and the resultant losses in well capacity will require two additional completions in 1972, as was stated in the answer to the previous question.

Q. From your knowledge and study of the Rayne Field

and your experience in south Louisiana, have you made an estimate

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of the number of work-overs of wells which will be required during the time shown on your exhibit and which will enable Texas Eastern to produce the quantities which you have estimated? A. I have.

Q. Please state what your estimate is with reference to that matter. A. In 1962, Nodosaria Unit 5, No. 1, must be reperforated to open the entire productive section. This well is now open in only 15 feet of the productive section, whereas several times that is available to production and should be opened. In 1963 it will be necessary to squeeze perforations now open in Nodosaria Unit 9, No. 1, in order to shut off water and reperforate in the remaining sand above the level at which water is now being produced.

In 1967, one well should be recompleted from the Klumpp D sand to the Homeseekers E sand to increase the deliverability of gas from that sand. In 1971, one well should be recompleted from the Klumpp D sand to the Klumpp E sand to bring the latter sand into production. In 1972, upon the depletion of the Homeseekers D-4 sand, recomplete that well in the Homeseekers E sand, again increasing the deliverability of gas from that sand.

Q. Were you asked to advise Texas Eastern with reference to the volumes of residue gas to be produced from each reservoir

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and the wellhead pressures of the various wells which have been drilled and will be drilled in the Rayne Field in order to determine when compression would be required and in what volume? A. I was. I gave them estimates of the annual volume of residue gas to be produced and the flowing wellhead pressure which would exist for wells producing from each reservoir on an annual basis.

(1825)

Mr. Deakins: I now offer page 2 of Exhibit X-2 and tender the witness for cross-examination.

Presiding Examiner: Your offer will be taken under advisement.

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John P. Furman

was called as a witness, being first duly sworn, and testified as follows:

Direct Examination

By Mr. Deakins:

Q. Please state your name and address. A. My name is John P. Furman. My business address is 1523 L St., N.W, Washington, D. C.

Q. By whom are you employed and what is your position with that firm? A. I am employed by Foster Associates, Inc. I am general manager of the firm.

Q. How long have you been with Foster Associates and in what way have your duties with the firm prepared you to present the testimony you are to give in this proceeding? A. I have been a member of Foster Associates since July, 1956, and during this period I have participated actively in

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our research on current market prices and on regulatory actions in certificates and rate-making proceedings. I share with our Midcontinent manager responsibility for these research programs.

Q. What, briefly, has been your education? A. I received an AB Degree from Princeton University in 1942, an LLB Degree from Yale Law School in 1946, and an MA Degree in the field of Economics from American University in 1954.

Q. What experience have you had in the field of economics, apart from the experience you have gained as a member of Foster Associates? A. In 1946 I taught elementary economics at Yale University as a part-time assistant in instruction. From 1946 through 1948 I was employed as an economist by the Department of State in the industry branch of the Office of International Trade. From 1948 through June, 1956, I was an attorney-advisor in the Office of the Legal Adviser in the same department, and during the latter half of the period I was responsible under the general direction of the Assistant Legal Adviser for Economic Affairs for providing legal advice on problems arising in connection with foreign aid programs, including programs of economic assistance.

In 1959, I served as a consultant to the Draper Committee, which had the formal title of the President's Committee to

Study the United States Military Assistance Program, and in that capacity I participated in the preparation of the committee's report on economic assistance programs and their administration.

Q. Is this your first appearance before this Commission? A. No. I appeared as a witness on behalf of Gulf Oil Corporation and Tidewater Oil Company in the Bastian Bay certificate proceeding, United Gas Pipe Line Company, et al., Docket Nos. CP60-36, et al., and presented both direct and surrebuttal testimony on natural gas prices.

Q. Have you appeared elsewhere as a witness? A. Yes, in 1960 I appeared as a witness for Tennessee Gas Transmission Company in a proceeding in the District Court for the 126th Judicial District of the State of Texas, and testified concerning problems relating to the determination of the current market value of gas in Texas for purposes of

calculating the amount of tax due under the Texas severance beneficiary tax.

Q. On what subject have you been asked to testify in these proceedings? A. I have been asked to present information on field prices so that the acquisition cost to Texas Eastern of the Rayne Field gas can be compared with prevailing market prices for gas under long-term gas sales contracts.

Mr. Deakins: Mr. Examiner, I would like to ask that there

be marked for the purpose of identification as Exhibit X-6 an exhibit entitled "Exhibit Accompanying Testimony of John P. Furman." The reason we are asking that this be marked out of order is that the other exhibits have been marked on various pages with serial numbers following the exhibits which have been offered here this morning and it won't disturb anything in the proceeding.

Presiding Examiner: It will be marked X-6 for identification.

(Whereupon the Document Referred to was marked for identification as exhibit X-6.)

By Mr. Deakins:

Q. Referring you now to Exhibit X-6, Mr. Furman, will you state whether the data on which you rely are set forth in that exhibit? A. Yes, sir.

Q. Was this exhibit prepared by you or under your general supervision and direction? A. It was.

Q. Please state how this exhibit is organized. A. The first seven schedules deal with prices paid for gas in south Louisiana by interstate pipelines under long-term contracts dated between January 1, 1958, and June 30, 1959. The next schedule, Schedule 8, summarizes prices paid under

Long-term contracts dated after July 1, 1959. The final sched-

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ule, schedule 9, lists sales which have been permanently certificated by the Commission where the average base price called for by the contract was 20c or more.

Q. This outline of your exhibit indicates that you will give primary attention to the period January 1, 1958, through June 30, 1959. Why have you selected this time period? A. Texas Eastern instructed me to give primary attention to market prices prevailing during the general period of time that the lease-purchase agreement through which Texas Eastern acquired the interest of the majority working interest in Rayne Field was negotiated and consummated.

The lease-purchase agreement was dated December 4, 1958. I understand that the consummation of the agreement was contingent on the completion of a number of additional steps and that the transaction was finally concluded in July, 1959.

Another consideration is that the time period should be long enough to contain a substantial number of transactions. It was my conclusion that it would be appropriate to use a period of 18 months, beginning roughly one year prior to the conclusion of the lease-purchase agreement.

Q. What contracts dated between January 1, 1958 and June 30, 1959 are covered by your analysis? A. The analysis covers all sales in south Louisiana, including off-shore areas to interstate pipelines under long-term contracts which I have defined as contracts with a

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term of 15 years or longer, including contracts for the life of the lease. We have identified as coming within this definition 216 contracts which have been filed by the seller

with the Federal Power Commission either as rate schedules or in six cases with the seller's application for a certificate of public convenience and necessity. Since the primary concern is with the alternatives which were available to Texas Eastern in the south Louisiana market at or around the end of 1958, this analysis of market prices as set forth in Schedules 1 through 8 is not concerned with whether the sales in question have been permanently certificated by the Federal Power Commission.

I will deal separately with permanently certificated sales at a later point in my testimony.

Q. What information concerning these contracts is shown on your Schedule1? A. In addition to identifying the contracts by purchaser filing company, rate schedule number, and date of contract, Schedule 1 shows the field and parish, the term of the contract, the point of delivery, what types of price adjustment clauses the contract contains, whether the contract contains a take or pay clause, and the maximum pressure at which the seller may have to make deliveries in order for the gas to enter the buyer's line.

Column K shows the volume of annual deliveries under the

contracts. Provided the date of initial delivery was prior to January 1, 1960, the annual volume figure in column K is taken from the purchaser's form 2 report to the Federal Power Commission. Otherwise, the annual volume figure is based on the first month's volume shown in the seller's estimated billing statement. The remaining columns contain price information.

Q. Before you discuss the information on these remaining columns, will you state whether your exhibit contains additional information on the quality specifications in these contracts? A. It does, in Schedule 2, which is based on the 210 contracts filed as rate schedules. In south Lou-

isiana, the quality specifications in gas sales contracts are fairly standard, as Schedule 2 shows. Accordingly, I did not consider it necessary to include these specifications on a contract-by-contract basis in Schedule 1.

Q. Turn now to the price columns in Schedule 1. What prices did you show for each contract? A. Columns L through O show, respectively, initial base price, the average base price, the initial base price plus tax reimbursement payable by the buyer at the Louisiana tax rate which has been in effect since the end of 1958, and the average base price plus the same tax reimbursement.

Q. What do you mean by initial base price?

A. I mean by initial base price the price provided in the the base price schedule which is applicable at the date of initial deliveries under the contract. It does not include adjustments which may be called for by other provisions of the contract on account of such factors as Btu content, sulphur content, or gathering. It should be noted that this initial base price is only a part of the price bargain between the parties to a contract because the initial base price is only a part of the base price schedule, and the contract usually contains other provisions which affect the price.

Q. What do you mean by the term "average base price"? A. By average base price I mean the average of the prices which will be paid in accordance with the base price schedule in the contract for all gas delivered during the term of the contract, assuming that deliveries are made at a uniform annual rate.

Q. How have you calculated this average base price? A. The average base price has been calculated by weighting the initial base price and each of the subsequent fixed prices by the length of the period for which each price is to be effected. Where the contract is for the life of the

reserves, it is assumed for the purpose of computing the average base price that the term is 20 years.

Q. Which of the prices shown on Schedule 1 do you consider to be the most significant for the purpose of this pro-

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ceeding? A. The Commission has stated in the order issued in this proceeding on July 14, 1961, that it plans to determine "whether the cost of the Rayne Field gas to Texas Eastern and its customers over the productive life of the field is out of line." This makes it clear that the Commission is interested in prices over a period of years. The initial base price, however, relates only to the gas delivered in the early years of the contract, except in the rare case in which the contract provides for no fixed step-ups. On the other hand, the average base price is an expression of the prices called for by the fixed price schedule of the contract over the term of the contract, and for this reason provides a better basis for comparing the cost of gas under a lease-purchase arrangement with prices paid under a sales contract.

Q. Does this mean that you will ignore initial base prices in your analysis? A. No, I have also included initial base prices in the analysis. In this connection I would like to point out that neither average base prices nor initial base prices reflect the effect of favored nation, redetermination or other indefinite pricing clauses. From the point of view of the seller, these clauses are very valuable components of the total price bargain.

Q. Up to this point you have not discussed tax reimburse-

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ment. Do you propose to use tax-inclusive prices? A. Yes, the prices shown for gas sold under the gas sales contracts with which the Rayne Field transaction is to be compared

should include an amount for tax reimbursement by the purchaser in cases where such reimbursement is required by the contracts. It is my understanding that in the past the Commission has uniformly permitted independent producers to file for and collect the amounts of tax reimbursement provided for by their contracts without suspension or refund obligation, except in cases where the constitutionality of the tax has been contested in the courts or where there is a question concerning the amount of tax reimbursement to which the producer is entitled. Accordingly, we have added to the initial base price shown in column L of Schedule 1 and the average base price shown in column M of Schedule 1 any tax reimbursement payable under the terms of the contract at the tax rate in effect since the end of 1958.

Q. Based on tax-inclusive prices shown on Schedule 1, what was the pattern of prices prevailing in the south Louisiana area in the period January 1, 1958 through June 30, 1959? A. To assist in answering this question, the prices shown in Schedule 1 have been distributed from highest to lowest with initial base prices plus tax reimbursements shown in Schedule 3 and average base prices plus tax reimbursement

shown in Schedule 4. Each of these schedules shows the number of contracts at each price, the number of contracts for which volume information is available, and the total volume at each price.

Q. What are the results of this analysis? A. The significant data are those which show the volumes of gas which were purchased at different price levels during this 18-month time period. Out of 212 contracts for which we have volume information, 93 provided for an initial base price plus tax reimbursement of more than 23c per Mcf. These contracts accounted for volumes totaling 253,000 MMcf,

or over 60% of the total volume of 404,000 MMcf. On the basis of volume, the median price was 23.55¢ per Mcf.

Q. What proportion of the total volume was acquired at initial base prices plus tax reimbursement of 20¢ per Mcf or more, and what proportion was acquired at prices below this level? A. Out of the total volume of 404,000 MMcf, 369,000 MMcf were acquired at 20¢ per Mcf or more, and the remaining 35,000 MMcf, or only 9%, were acquired at less than 20¢.

Q. If one assumes that on the average the reserves represented by long-term gas sales contracts are 20 times the annual delivery volumes that you have used, how large were the reserves acquired during this 18-month period at initial base prices plus tax reimbursement of less than 20¢ per Mcf?

A. On the basis of such an assumption, the data in Schedule 3 indicate that only 700,000 MMcf in reserves were acquired at initial base prices plus tax reimbursement of less than 20¢ per Mcf.

Q. What are the results, if one looks to average base prices plus tax reimbursement? A. More than half the contracts, or 110, provided for prices of 25¢ per Mcf or more. These contracts accounted for volumes totaling 315,000 MMcf, or over 75% of the total volume of 404,000 MMcf. The median price on the basis of volume was 25.90¢ per Mcf.

Q. What proportion of the total volume was acquired at average base prices plus tax reimbursement of 20¢ per Mcf or more, and what proportion was acquired at prices below this level? A. Out of the total volume of 404,000 MMcf, slightly more than 401,000 MMcf were acquired at average base prices plus tax reimbursement of 20¢ per Mcf or more, and only between 2,000 and 3,000 MMcf, or less than one per cent, were acquired at prices below 20¢ per Mcf.

Q. If one assumed again that on the average the reserves represented by these contracts are 20 times the annual delivery volume, how large were the reserves acquired during this 18-month time period at average base prices plus tax reimbursement of less than 20¢ per Mcf?

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A. On the basis of such an assumption the data in Schedule 4 indicate that less than 100,000 MMcf were acquired at prices below 20¢ per Mcf.

Q. Are there any other conclusions which should be drawn from the data presented in Schedule 1? A. It is clear that the volume of gas involved in the Rayne Field purchase is unusually large, since the recoverable reserves are estimated to be of the general magnitude of one trillion cubic feet. Large packages of gas tend to command higher prices than small packages, and this factor should be borne in mind in comparing the Rayne Field purchase with prevailing area prices.

To illustrate this relationship between price and volume, Chart 1 has been prepared on the basis of the contracts filed as rate schedules which are listed in Schedule 1, as summarized for this purpose by Schedule 6.

Q. What do Chart 1 and Schedule 6 show? A. For the purposes of Chart 1, the contracts have been divided into three volume classes: (1) contracts under which annual deliveries are 1200 MMcf or more; (2) contracts under which annual deliveries are 600 MMcf or more, but less than 1200 MMcf; and (3) contracts under which annual deliveries are less than 600 MMcf.

For each volume class there have been calculated (1) the average monthly deliveries under the contracts in that class;

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and (2) the median average base price. The results are plotted on Chart 1 by three heavy black dots. For the pur-

pose of this comparison, tax reimbursement has not been added to the prices.

Q. What are these results? A. The median average base price in the small volume class is 21.5¢ per Mcf. The median average base price in the intermediate volume class is 23.2¢ per Mcf. The median average base price in the large volume class is 24.3¢ per Mcf. Thus there is a difference of almost 3¢ per Mcf between the median average base price found in contracts in the large volume class and in contracts in the smallest volume class, and a difference of approximately 1¢ per Mcf between contracts in the large volume class and contracts in the median volume class. This relationship between price and volume is a factor which the Commission should take into account in evaluating the cost of the Rayne Field gas in the light of prevailing area prices.

Q. Is there any other special factor which the data on Schedule 1 suggest that the Commission should bear in mind in comparing the Rayne Field purchase with prevailing area prices? A. I am aware that it has previously been pointed out in this proceeding that the lease-purchase form of transaction has a special value to Texas Eastern because it avoids

future increases in the cost of gas resulting from an indefinite pricing provision, such as a price determination clause which is a frequent characteristic of the gas sales contract. By the same token, the seller gives up something of value when he forgoes the the advantages of an indefinite pricing provision. Where this occurs there is a tendency for the omission of the indefinite pricing provision to be reflected in higher fixed prices in the contract.

Q. I assume you are referring to Chart 2 and Schedule 7 in your exhibit? A. Yes, sir. Chart 2 and Schedule 7 are based on the large volume contracts filed as rate schedules

which are listed in Schedule 1. Using a weighted average of average base prices as a measure, we have compared the average base prices found in contracts containing one or more indefinite pricing provisions with the average base prices found in contracts containing no indefinite pricing provision.

As Schedule 7 shows, where the contract contains no indefinite pricing provisions there is a tendency for the average base price to be several cents higher than where the seller receives the benefit of one or more indefinite pricing provisions. In the case of the contracts covered by Schedule 7, the average of the average base prices in contracts containing one or more indefinite pricing provisions was 23.6¢ per Mcf, and the average of average base prices in contracts

containing fixed prices only was 25.9¢ per Mcf.

Q. Up to this point your testimony has been concerned with the prevailing level of prices in the south Louisiana area in 1958 and the first half of 1959. Would the picture be substantially altered if one looked to prices in a more recent time period? A. No. Schedule 5 presented a summary of prices in the 18-month period which ended June 30, 1959. Schedule 8 is a similar summary of prices under contracts dated since July 1, 1959. As in the case of Schedule 5, the summary covers all long-term sales to interstate pipelines under contracts which have been filed with the Federal Power Commission, including contracts filed with independent producer certificate applications through September, 1961.

Q. How do the results shown by Schedule 5 compare with the results shown by Schedule 8? A. Schedule 5 shows that in the period January 1, 1958, through June 30, 1959, initial base prices plus tax reimbursement range from 13.75¢ per Mcf, up to 24.05¢ per Mcf, and average base

prices plus tax reimbursement range from 15.65¢ per Mcf up to 28.45¢ per Mcf. The median initial base price plus tax reimbursement was 23.55¢, with the range for the middle 80% of the volumes being from 20.25¢ to 23.30¢. The median average base price plus tax reimbursement was 25.90¢, with the range for the middle 80 per cent of the volumes

being from 22.55¢ to 28¢. In the later time period, Schedule 8 shows that while the total range of prices was wider, the range of prices for the middle 80% of the volumes narrowed slightly and was at roughly the same level as in the earlier period, whether initial base prices or average base prices are used as the basis. Initial base prices plus tax reimbursement in contracts accounting for the middle 80% of the volumes ranged from 20.67¢ up to 23.60¢, compared with the earlier range of 20.25¢ to 23.80¢.

Average base prices plus tax reimbursement in contracts accounting for the middle 80% of the total volume range from 23.00¢ to 27.90¢, compared with the earlier range of 22.55¢ to 28.00¢. The median price based on initial base prices plus tax reimbursements change from 23.55¢ to 22.83¢. The median price based on average base prices plus tax reimbursement remain the same at 25.90¢ per Mcf.

Q. The preceding section of your testimony has been based on market prices for natural gas as measured by prices in contracts filed with the Federal Power Commission. You state at the outset that you also proposed to consider prices in contracts covering sales which have been certificated by the Federal Power Commission, and that your exhibit includes a schedule on the subject. What is that schedule and what does it cover? A. The schedule to which I referred is Schedule 9.

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It listed sales in south Louisiana where the Commission has issued an order granting a permanent certificate, and that order is not under court or commission review. Thus, where an order granting a permanent certificate is subject to further consideration by the Commission because of an order by a reviewing court or because the proceeding has been reopened, the contract or contracts affected have not been included in the schedule. The listing is limited to cases where the average base price provided for by the contract is 20¢ per Mcf or higher. Sales which are being made under temporary authorization are not included.

Q. How are the sales shown by the schedule arranged? A. The sales are arranged by date of certification.

Q. What information on prices is included in that schedule? A. Column J shows the initial base price at which each sale was certificated. Column K shows the initial base price plus tax reimbursement which has been payable under the contract since the end of 1958. Similarly, column L shows the average base price under the terms of the contract, and Column M shows the average base price plus the tax reimbursement which has been payable under the contract since the end of 1958.

As I have previously stated, the FUC has normally allowed the seller to receive the full tax reimbursement called for by

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his contract. Footnotes to Schedule 9 show any cases in which the proper amount of the tax has been questioned.

Q. What comments do you care to make on this schedule? A. Looking at Column J of the schedule which gives the initial base price, the schedule shows eight instances in which certificates have been issued to producers at initial base prices of 22¢, and eighteen instances in which certificates have been issued to producers at initial base

prices of 21.5¢. The initial base prices plus tax reimbursement in these 26 cases range from 22.0¢ to 24.05¢. The Commission has been certificating sales with initial base prices of 20¢ since 1954, when the regulation of producers began. These early 20¢ prices were accompanied by tax reimbursement of one cent which has been increased to 1.50¢ or more as the Louisiana tax law has changed.

Q. What do you find when you look at average base prices provided for by the contracts listed in your Schedule 9? A. There are 47 instances in which the average base price is 23¢ or more, and in 28 of these cases the average base price is 25¢ or more, with eight cases in which the average base price is 26.3¢. When tax reimbursement at the rate in effect since December, 1958 is added, the prices for these 47 contracts range from 24.5¢ to 28.35¢.

Q. I understand that the figure you have given in answer to the last two questions are on the basis of the entire time

period covered by Schedule 9. What would be the result if you looked only to certificates issued by the Commission in 1958? A. In 1958, the Commission issued 30 certificates in cases in which the initial base price was 20¢ or higher. In 11 of these cases the initial base price was 21.5¢. When tax reimbursement at the rate in effect at the end of 1958 is added, the tax-inclusive prices in these 29 cases range from 21.75¢ to 23.675¢. In 15 instances the average base prices is 23.0¢ or more, and in 14 of these 15 cases the average base price is 25.0¢ or more.

When tax reimbursement is added to the average base price in these 15 cases, the prices range from 25.475¢ to 27.675¢.

Q. Column I of Schedule 9 shows an annual volume figure for each sale listed. What is the total of the annual volumes for the sales shown on that schedule? A. The total is 423,031 MMcf.

Q. What is the total of the annual volumes shown for the permanently certificated sales where the initial base price and the current tax reimbursement totaled 20¢ or More? A. The total annual volume for such sales is 343,873 MMcf.

Q. If one assumed that the reserves covered by these contracts are 20 times the total annual volumes, how large

would be the reserves represented by permanently certificated sales where the initial base price plus tax reimbursement is 20¢ or more? A. On that assumption the reserves represented by such permanently certificated sales would be 6,887,000 MMcf, or 7 trillion cubic feet.

Mr. Deakins: I now offer Exhibit X-6 and tender the witness for cross-examination.

Presiding Examiner: The offer will be taken under advisement. We will take the morning recess at this time. If there are any clarifying questions you can ask them after the recess.

* * * * * * * * * *

Presiding Examiner: Mr. Lewnes.

Mr. Lewnes: Miss Suchow has some questions.

Miss Suchow: Did you say Schedule 9 of your exhibit includes only certificated contracts which were not appealed?

The Witness: No, I said cases where the order is not under court or Commission review. I know of cases in which efforts were made to take several of the contracts on the list to courts, where those efforts were unsuccessful—

Miss Suchow: Well, would you turn to sheet 6 of the schedule. Below the middle of the page you have listed two sales to Transcontinental Gas Pipe Line Company, one by Sunray Midcontinent and another by Superior Oil Company. Is it

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your understanding that the appeals in those cases were unsuccessful?

The Witness: You have me. That is an error. Those two I am sure should not be included.

Miss Suchow: Is it your understanding that the first one was the subject of the 10th Circuit Court's decision in United Gas Improvement against the Federal Power Commission, 290 Fed. 2d 159?

The Witness: If you say so, that sounds right.

Miss Suchow: And does it sound right to you also that the second one was the subject of the 5th Circuit's decision in a case of the same name, reported at 290 Fed. 2d 147?

The Witness: That sounds right too, and as you say, those two should have been omitted.

Miss Suchow: And how about the one under that, the sale by United to the California Company, would you say was unsuccessful?

The Witness: I see now how that error was made. My recollection is that this one also should have been omitted.

Miss Suchow: Is it your recollection that that sale was a subject of decision by the 9th Circuit, reported at 283 Fed. 2d 817?

The Witness: I have no such precise memory for citations.

Miss Suchow: Mr. Furman, as far as Schedules 1 and 8 of your exhibit are concerned, can you give the legal status

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of each proceeding; and what I want to know is whether the contracts have been certificated by the Commission, if so, the date, whether certificate applications are presently pending before the Commission, have been consolidate in Area Rate Proceeding 61-2, if certificates have been issued, whether they were appealed, and what the dispositions have been.

The Witness: It would be possible to make such an analysis. I have not done so because, as I think my testimony made clear, I did not take as a test for inclusion or exclusion the status of the sale with reference to Commission certification.

Miss Suchow: Well, Mr. Examiner, with that explanation by the witness I move to strike the entire exhibit and related testimony. I think that insofar as Schedules 1 through 8 are concerned, the witness has stated that they include contracts from 1958 and thereafter. As everyone in this room is well aware, a great many of those contracts were certificated by the Commission, their certifications were reversed by the courts on grounds that the prices had not been proved to be consistent with the public convenience and necessity, and are now before the Commission again in order to determine that very question.

I believe it is undoubtedly true that a great many other contracts listed in this exhibit have not been certificated but are awaiting certification by the Commission in order to determine whether they and their price provisions are consis-

tent with the public convenience and necessity. In view of that it seems to me impossible to use any of the data contained in these schedules as meaningful guideposts for any determination that is to be made in this case. We have been presented time and time again with the use of contract price data which itself or themselves have not yet been established to be consistent with the public convenience and necessity.

An attempt has been made to use such data in order to prove the propriety of a proposed price, and that attempt has been reversed and remanded by the courts on several occasions, and I don't think it worthwhile to go through the same routine again in this case. Unless the contracts

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themselves have been established to be required by the public convenience and necessity, are themselves nonsuspect, to use the words of one of the reviewing Courts, I don't think they have any place or any meaning for any relevant purpose in this case.

Mr. Deakins: Mr. Examiner, if what Miss Suchow says is true, the only pertinency of her remarks would go to the credibility of the evidence, and certainly not to strike. As a matter of fact, the evidence has not been received at all yet, so it couldn't be stricken, but that is all the pertinence of that.

I think the exhibits and testimony speak for themselves, with the exception of possible errors which the witness correct-

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ed at Miss Suchow's suggestion.

Presiding Examiner: Miss Suchow, what I did was to take the motion to admit the exhibit, I took that under advisement to be ruled upon at the conclusion of the cross-examination thereon. I will let it drop there. I think, however, that the basis of comparison of prices are prices which have been either permanently certificated by the Commission without condition or if there was an appeal from the Commission order to the court then you need the court review on the Commission price, but I will rule on that when we get through with the cross-examination.

Mr. Lewnes: Mr. Furman, referring to your Schedule 9, am I correct in assuming that inherent in your arriving at the average base price, Column L, is the assumption that this Commission will allow all escalations provided for in the contracts listed?

The Witness: It is correct that the average base price is based upon the fixed prices of the entire base price schedule.

Mr. Lewnes: Now the title of that schedule states it is

sales in southern Louisiana permanently certificated by the Federal Power Commission with average base prices of 20.00¢ per Mcf or above by date of certification. Have you made a similar study with the average base price of under

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20.00¢ per Mcf?

The Witness: There is, as perhaps you know, basic difficulty in relating certificate docket numbers with rate schedule numbers, and it is only through the establishment of that relationship that the price information which in our files at least has been available on the basis of the rate schedules can be compiled. Accordingly, although we have in south Louisiana gone further than I think in any other area in matching certificate numbers with rate schedule numbers, we have pursued this research only as far as it seemed necessary, and I cannot say to you whether on the basis of the present state of our records it would have been feasible to, for example, include all contracts.

Mr. Lewnes: But you do know of your own knowledge that there are some contracts whose average base price does come out to 20.00¢ or less in given areas?

The Witness: Oh, yes.

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1853

Gordon L. Jennings

was sworn and testified as follows:

Direct Examination

By Mr. Deakins:

Q. Please state your name. A. Gordon L. Jennings.

Q. By whom are you employed? A. Texas Eastern Transmission Corporation, Shreveport, Louisiana.

(1853)

Q. Are you the same Gordon L. Jennings who previously testified in these proceedings? A. I am.

Q. What is your present position with Texas Eastern? A. I am presently the supervisor of the Plans and Research Division of the Engineering Department.

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Q. When did you assume this position? A. I was promoted to the supervisor's position on May 1, 1958.

Q. In this capacity have you had occasion to make, or have made by personnel working under your supervision, engineering, design, and economic studies to determine the cost of gathering and transporting various blocks of gas reserves and gas supplies through Texas Eastern's gas pipeline system and the cost of delivering these supplies to Texas Eastern's customers? If so, would you please describe the nature of those studies? A. The greatest portion of the work performed by my division is related to the engineering, design, and economic evalution of gas pipeline systems. Prior to the preparation of all of Texas Eastern's applications to expand its system, engineering design studies are made to determine the additional pipeline and compression facilities necessary to provide the additional system capacity. A determination is made of the cost of installing and operating those facilities. By adding the field price of the additional gas supply to the annual costs relating to these additional required facilities, the incremental cost of service can be obtained. Comparison of this incremental cost of service with the revenues to be derived from the sale of the gas will yield a general indication of the economic feasibility of the program.

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Q. In your direct testimony in these proceedings which was in connection with Hearing Exhibit No. 50, you indicated that you had assisted in or supervised preparation

of Application Exhibits Nos. F, G, and G-II, contained in a number of Texas Eastern's applications to this Commission, including these same exhibits contained in Docket No. G-12446. Have you supervised the preparation of these same exhibits in applications which have been filed since the preparation of this docket?

If so, would you please state which dockets? A. Since my testimony was presented in this application, I have supervised the preparation of Exhibits F, G, and G-II in Docket Nos. G-17420, G-18968 and G-18969, et al, CP60-122, and CP61-203.

Q. Did you participate in or supervise the work related to engineering design and economic analysis of the facilities applied for in all of the dockets you have listed? A. I did.

Q. In addition to the work related to the engineering design and economic analysis work in the facilities applied for in these dockets, have you prepared or had prepared by personnel working under your direction and supervision engineering studies related to the cost of gathering and transporting the gas from car locations in Texas and Louisiana? A. I have.

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Q. Will you describe the nature of these studies and the purpose for which they were prepared? A. These studies were prepared for use by management as guides in determining the price which Texas Eastern might pay for additional supplies of gas. The geographic location of a gas reserve in relation to Texas Eastern's system as well as the magnitude or size of those reserves, are some of the prime factors in determining the value of the reserves.

For example, if gas is to be delivered to the New York market area and is to be sold at a given price, the cost of the gas plus its transportation cost to that market area must be approximately equal to the sale price. The trans-

portation of gas reserves from the extreme southern portions of Texas to New York will naturally bear a greater transportation cost than the movement of gas from a point adjacent to our existing system in South Louisiana because of the greater distance involved.

Therefore, for equal delivered costs in the New York area, the field price in South Texas would have to be less than the field price in South Louisiana. On a number of occasions I have prepared studies to determine the cost of transporting various blocks of gas to a common point on Texas Eastern's system in order that these comparisons might be made.

Q. Have you made any studies from which you can determine

the cost of transporting various blocks of gas reserves to Opelousas, Louisiana, which is the point at which the Rayne Field gas enters the Texas Eastern main line system? A. I have.

Q. Have you made any studies related to the cost of transporting to Opelousas, Louisiana, some of the major additions of gas supplies Texas Eastern has acquired since the original reserves were secured and if so, please describe the nature and results of these studies? A. I have made such studies. The addition of field reserves as distinguished from reserves Texas Eastern purchases from other pipeline companies, field reserves which Texas Eastern has acquired since the original pipeline system was placed in service, consist of three major blocks located in three general areas, namely (1), those reserves purchased along our Wilcox Trend Gathering System, (2) reserves connected to the system in Texas Railroad Commission Districts 2, 3, and 4, along our 30-inch pipeline between McAllen, Texas, and Blessing, Texas; and (3) gas reserves

associated with the purchase of gas from Petrolios Mexicanas, or Pemex, at a point near McAllen, Texas.

I have prepared a map showing the general location of these pipelines, that is, a geographic map.

Mr. Deakins: I will ask that there be marked for identification a one-page map which should be marked, Mr.

Examiner, as Exhibit X-7.

Presiding Examiner: It will be marked Exhibit No. X-7 for identification.

(The document referred to was marked Exhibit No. X-7 for identification.)

By Mr. Deakins:

Q. Did you prepare this exhibit or have it prepared under your supervision and direction, Mr. Jennings? A. I did.

Q. What does this exhibit show? A. This exhibit consists of a geographic map of the Texas and Louisiana Gulf Coast area showing Texas Eastern's pipelines in those areas. Also shown are the boundaries of Texas Railroad Commission Districts 2, 3, and 4, the Wilcox Trend Gathering System is shown as a pipeline with a number of laterals extending from it.

The main trunk line extending from a point near McAllen, Texas, to Blessing Station is also shown and the location of the Rayne Field gas south of Opelousas Station in Louisiana is also shown. The purchase of gas from Pemex is made, as I said, at a point near McAllen on the international boundary between the United States and Mexico.

Q. Now, you were talking about some studies you made, Mr. Jennings. Will you go ahead and continue that answer? A. I have made engineering studies to determine the

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approximate cost to Texas Eastern of purchasing and transporting reserves from each of these three major blocks I named to a point on Texas Eastern's system, namely Opelousas Station or Opelousas, Louisiana. The cost of Wilcox Trend gas at Opelousas is 24.0 cents per Mcf, consisting of an existing field price of 14.4 cents per Mcf at 15.025 p.s.i.a., plus 9.6 cents per Mcf for the transportation cost to Opelousas.

The cost of gas purchased in Texas Railroad Commission District 2 and 4, along our 30-inch pipeline to Opelousas is 24.7 cents per Mcf, consisting of an existing price of 15.6 cents per Mcf at 15.025 p.s.i.a., plus 9.1 cents per Mcf transportation cost to Opelousas.

The cost at Opelousas of gas purchased from Pemex is 24.6 cents per Mcf consisting of an existing price of 15.6 cents per Mcf at 15.025 p.s.i.a., plus 9.0 cents per Mcf transportation cost to Opelousas.

Q. What was the source of the information which you used to determine the field cost of the Wilcox Trend, South Texas and Pemex gas which you have just described? A. The prices which Texas Eastern is currently paying for such gas.

Q. How did you determine the most of transporting Wilcox Trend reserves to Opelousas? A. The transportation costs of Wilcox gas contain

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several components. First, I determined the average unit cost of transportation on the Wilcox Trend Gathering System by dividing the total annual charges applicable to this gathering system to include fixed charges on total investment and annual operation and maintenance expenses by the total annual deliveries to the terminus of this gathering system at Providence City, Texas.

This component may be defined as the gathering cost and is approximately four cents per Mcf. To this four cents per Mcf gathering cost must be added the cost of moving this volume of gas from Providence City to Opelousas, which cost is based on the average cost of transportation through the 24-inch pipeline between Providence City and Blessing, Texas, shown on Exhibit X-7 and the average cost of transportation through the 30-inch pipeline system between Blessing and Opelousas, Louisiana, also shown on Exhibit X-7.

As I stated previously, the total cost of transportation which I ascribe to this Wilcox gas in moving it from the fields to Opelousas is 9.6 cents per Mcf. In the case of the reserves Texas Eastern purchases in South Texas in Railroad Commission Districts 2 and 4, the cost is based upon the average cost of transportation through this portion of Texas Eastern's system and is approximately 1.6 to 1.8 cents per Mcf per 100 miles.

The cost of transporting Pemex gas to Opelousas was

determined in a similar manner.

Q. You stated that the field prices you have given previously for Wilcox Trend, South Texas, and Pemex gas are those prices currently in effect, is that correct? A. It is.

Q. Have you computed or had computed the average price of the South Texas and Pemex gas over the life of the various contracts, taking into account the fixed escalation provisions contained in the contracts and if so, state the results of those computations. A. I have. The average price of the South Texas contracts over the life of the contracts will be 16.7 cents per Mcf based on prices paid and production to date and the estimated production and fixed escalation in future years over the life of the contract.

The average price computed in a similar manner of the

gas purchased from Pemex will be 16.8 cents per Mcf over the life of the contract.

Q. Using those prices, have you made a similar computation of the average cost of these blocks of gas at Opelousas, Louisiana, and if so, please state the result of those computations. A. Before I can translate these average long term field prices of the South Texas gas to Opelousas, I must make one further adjustment in the cost of service to account for.

field compression which will be required in the later years of the production. It has been my experience that the cost of field compression that will be experienced by Texas Eastern will amount to approximately 1 cent per Mcf for the volume of gas compressed.

Compression will only be required for those reserves produced during the latter years of production and it is my estimate that compression will be required to enable production of the last one-third of these reserves.

Therefore, the cost of compression when related to total reserves, will be approximately one-third of one cent per Mcf or approximately 0.33 cents per Mcf. Using the average price of 16.7 cents per Mcf for the South Texas Gas and adding to this figure the cost of transportation of 9.1 cents per Mcf to move this gas to Opelousas, plus the 0.33 cents per Mcf to account for compression, the average long-term cost of the South Texas gas at Opelousas will be approximately 26.1 cents per Mcf.

The average cost at Opelousas of the Pemex gas over the life of the contract will be 25.8 cents per Mcf. I should note that this figure does not include a compression charge since the Pemex gas will be delivered at the pipeline pressure during the life of production.

Q. Are you familiar in a general way with the fact that Texas Eastern has negotiated for and considered the purchase

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of certain other gas reserves of considerable magnitude located in South Texas and off-shore Louisiana? A. I am.

Q. Would you please state what reserves you have been advised that Texas Eastern was considering, the areas in which they are located, and how those facts came to your knowledge? A. As I stated, I have been requested on a number of occasions to make engineering, design, and economic studies of the gathering of gas from a number of locations and its transportation through Texas Eastern's system.

In order to perform this work, it was necessary that I have knowledge of the nature of the gas reserves to include their location, size, the anticipated daily production rates and the pressures at which the gas would be available in the fields. I was aware that these studies would be used in determining the approximate price that Texas Eastern could offer for these reserves. The areas in which gas reserves are located for which I have prepared these studies include reserves located in the Jim Hogg County, Texas, which is located in Railroad Commission District No. 4, reserves located in Duval County, Texas, also in Texas Railroad Commission District No. 4, and gas from various fields located off-shore from Louisiana, including gas from the Ship Shoal area below New Orleans, Louisiana, and gas located in off-shore

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areas south of Lake Charles, Louisiana.

Q. Will you please state the nature of the studies you have made concerning the transportation of the gas from these fields? A. In each case an engineering design and cost study was prepared to determine the cost of gathering and transporting these blocks of gas to Texas Eastern's system and the cost of expanding Texas Eastern's system to enable its transportation to some common point.

(1864)

Q. Have you computed the cost at Opelousas, Louisiana, of some of these blocks of gas reserves and if so, would you please give the results of these computations? A. I have. The cost of the Jim Hogg County, Texas, gas I referred to when referred to Opelousas, would be 28.02 cents per Mcf, including a field price at the F.P.C. initial rate of 18.0 cents per Mcf at 14.65 p.s.i.a. or 18.46 cents per Mcf at 15.025 p.s.i.a., the incremental cost of transportation to Opelousas and the 0.33 cents per Mcf compression adjustment.

The cost of Duval County gas, when translated to Opelousas would be 31.68 cents per Mcf determined in a similar manner. The cost of Ship Shoal gas when translated to Opelousas, would be 31.82 cents per Mcf consisting of a price equal to the most recent F.P.C. area price of 24.05 cents per Mcf, including tax reimbursement, plus transporta-

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tion cost to Texas Eastern's system.

Although gas from this area would be introduced into Texas Eastern's system at a point some 50 miles east of Opelousas, I have made an adjustment to the transportation cost to account for this more eastwardly location in order to present its cost at Opelousas.

Q. Has Texas Eastern purchased gas from any of these blocks you have just mentioned? A. It has not.

Q. As a result of all of these studies have you been able to arrive at a general rule of thumb for the cost of transporting gas in Texas and South Louisiana which takes into account all of the costs related to its transportation and if so, please state what that rule of thumb might be. A. Based on the many studies which my division has made, it is my observation that the cost of transportation of volumes of gas in the order of 300,000 to 400,000 Mcf a day or more through our major line system is in the order of

1.6 to 1.8 cents per Mcf per 100 miles of distance at 100 percent load factor.

The cost of transportation for the movement of volumes of gas on the order of 200,000 Mcfd would range from levels slightly higher that is from 1.8 to 2.0 cents per Mcf per 100 miles up to 2.5 cents per Mcf per 100 miles for extremely small volumes of gas. These figures apply generally to the

on-shore South Texas and South Louisiana areas. In the case of off-shore transportation, the transportation cost would be approximately 5 cents per Mcf per 100 miles, depending to a great extent on the volume handled.

The cost of transportation of extremely small volumes could be somewhat higher than this 5 cents figure and correspondingly, the cost of extremely large volumes of gas from off-shore areas might be less than the 5 cents per Mcf per 100 miles.

For the purposes of comparisons, which I will make later in my testimony, I use a figure of 5 cents per Mcf per 100 miles for transportation cost off-shore, 2.5 cents per Mcf per 100 miles for transportation cost through an on-shore gathering line, and 1.8 cents per Mcf per 100 miles through a main line system.

In my opinion, these figures represent an approximate minimum cost and the actual cost would be somewhat higher.

Q. Have you been requested to make a computation to determine the cost to Texas Eastern at Opelousas, Louisiana, of gas reserve purchases by other pipeline companies in South Louisiana? A. I have.

Q. Referring you first to the cost at Opelousas of gas from fields for which a price has been permanently certificated by the Commission, have you had occasion to make such an

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estimate concerning the gas purchased by Trunk Line in block 26, off-shore Louisiana, in the Vermilion area, and gas purchased by Trunk Line in the north fresh water Bayou Field, Vermilion Parish, Louisiana, and if so, would you give the results of that determination. A. I have. The cost to Texas Eastern of this gas if transported to Opelousas would be approximately 26.52 cents per Mcf based on an initial base price of 22.0 cents per Mcf field price plus 2.05 cents per Mcf tax reimbursement, plus 2.47 cents per Mcf approximate transportation cost to Opelousas.

The price I used for the gas and the tax reimbursement was obtained from Schedule 9 of Exhibit X-6, sheet 5 of 10. I should also note that the volumes of gas from these two fields total approximately 20,000 Mcfd and the transportation cost for a volume this small would be somewhat higher than the transportation cost I have used.

Miss Suchow: Mr. Examiner, before counsel continues I have a motion to strike addressed to the last question and the witness' answer. The question and the answer related to certain prices paid by Trunk Line Gas Company. I believe those prices were certificated in a Commission decision issued after proceeding from which the Public Service Commission was denied intervention on the ground that we could not be affected by the prices paid by this company and,

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therefore, I think that by Commission order, anything to do with prices paid by Trunk Line is inadmissible in this proceeding.

Mr. Deakins: That just means we can't prove the facts, is that it, Mr. Examiner? I think the motion is without any merit whatever.

Presiding Examiner: Well, Miss Suchow, let me look at that and I will take it under advisement.

Miss Suchow: The proceeding is Opinion 321 and various orders issued with respect to the Public Service Commission in that case.

Presiding Examiner: I will rule on it for you.

By Mr. Deakins:

Q. Have you make a similar determination for gas purchased by Southern Natural in Iberville, St. Martin, Plaquemines, and Iberia Parishes, shown on sheet 2 of Schedule 17, Exhibit X-6 and if so, will you give the results of that computation? A. First, I believe those are shown on sheet 3.

Q. Yes, they are on sheet 3. A. I have. As shown on Schedule 9, sheet 3 of Exhibit X-6, the initial base price plus tax reimbursement of the gas purchased by Southern Natural in these parishes ranges from 23.0 cents per Mcf to 23.68 cents per Mcf. Using an initial base price of 23.25 cents per Mcf including tax reimbursement,

the approximate cost of this gas, if transported to Opelousas, would be 24.93 cents per Mcf including approximately 1.68 cents per Mcf for the gathering and transportation component.

In my opinion, the 1.68 cents per Mcf I have used for the gathering and transportation component based on the general rules of thumb that I gave is understated because as can be seen from the schedule, this gas is located in a number of fields in rather small volumes and considerable gathering facilities have had to be constructed to gather this gas to some point for transportation.

I believe the actual transportation cost would be somewhat higher than the figure I have used.

Q. Have you made a similar study for gas purchased by United Gas Pipe Line Company in Terre Bonne Parish from the Bayou Piquant, Halter Island, and Lake Hatch

fields as shown on sheets 2 and 3 of Schedule 8 and if so, would you please give the results of that determination? A. I have. The cost of this gas at Opelousas would be approximately 24.8 cents per Mcf, consisting of 20.0 cents per Mcf initial base price plus 1.75 cents per Mcf for tax reimbursement plus approximately 3 cents per Mcf for the transportation component. The price data on these fields is also shown on sheets 2 and 3 of Schedule 9, Exhibit X-6.

Q. Have you made a similar determination relating to gas purchased by Texas Gas Transmission Corporation in

Assumption and Lafourche Parishes from the East Lake Palourde and Thibodaux Fields, and if so, would you state the result of that computation? A. I have. These fields are listed on sheet 1, Schedule 9, Exhibit X-6, which shows that the initial base price for this gas is 20.0 cents per Mcf plus a minimum 1.75 cents per Mcf tax reimbursement for a total price at the field of 21.75 cents per Mcf.

Adding to this figure a transportation component of approximately 2.2 cents per Mcf, the value of this gas at Opelousas would be approximately 23.95 cents per Mcf.

Q. Have you made similiar determination of the cost to Texas Eastern at Opelousas, Louisiana, of gas from fields for which the field price is pending certification, namely the gas from Bastian Bay Field in off-shore Louisiana, the gas purchased by Transcontinental Gas Pipeline Company in Blocks 28 and 32 in the Ship Shoal area off-shore Louisiana, and if so, would you please state the approximate value of this gas at Opelousas, the price you have used for the gas, and the basis of this price? A. I have. Using the initial base price of 22.0 cents per Mcf shown on sheet 8 of Schedule 1 of Exhibit X-6, the cost of the Ship Shoal gas purchased by Transcontinental, if transported by Texas Eastern to Opelousas, would be approximately 25.6 cents per Mcf including approximately

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3.6 cents per Mcf for the transportation component.

I should also state that I have reviewed Tranco's exhibits in their Docket No. G-16603 in which they requested authorization for facilities to gather this gas and have determined that the incremental cost of moving this gas from these two blocks to the shore line is approximately 3.1 cents per Mcf.

This shore line point is approximately 100 miles south of Opelousas. Using the 3.1 cents per Mcf transportation cost to the shore line, plus the 22.0 cents per Mcf price at the field, plus 2.5 cents per Mcf for transportation from the shore line to Opelousas, the cost at Opelousas of this gas would be 27.6 cents per Mcf.

Gas from Bastian Bay translated to Opelousas station would have a cost at that point of approximately 28.16 cents per Mcf, consisting of the 24.8 cents per Mcf initial base price plus tax reimbursement, plus approximately 3.36 cents per Mcf transportation cost.

This transportation component of 3.36 cents includes an adjustment to account for the fact that Bastian Bay gas would have entered Texas Eastern's system at a point east of Opelousas. Therefore, I have translated this cost westwards to some extent. I should also state that the incremental cost on the United Gas Pipeline system for moving gas to the vicinity of Lirette, Louisiana, is approximately 6.0 cents

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per Mcf based on an analysis of exhibits contained in their Docket CP60-36. Adding this incremental cost of 6 cents per Mcf to the field price of 24.8 cents per Mcf, the cost of this gas at a point near Lirette, Louisiana, would be 30.8 cents per Mcf.

Lirette, Louisiana, is approximately 100 miles southeast

of Opelousas, so that the cost at Opelousas would be approximately 33.3 cents per Mcf.

Q. Have you made a similar determination for gas purchased by Hope Natural Gas Company in South Louisiana and transported by Texas Gas Transmission Corporation to Texas Eastern Transmission Corporation for delivery to Hope in Ohio and Pennsylvania, and if so, would you state if you were able to determine its approximate cost at Opelousas and the results of that determination? A. I have.

Mr. Flaningam: Would you read that question, please?

(Question was read.)

The Witness: Hope Natural Gas Company purchases gas from a number of fields in South Louisiana, some of which are off-shore, south of Lake Charles. This gas is delivered at the fields to Texas Gas Transmission Corporation which gathers the gas and transports it to Lebanon, Ohio, where it is delivered to Texas Eastern which, in turn, transports it to the delivery points of the Consolidated Natural Gas System.

Texas Gas constructed substantial gathering facilities on their system in South Louisiana to enable them to render the transportation service. The total transportation rate charged by Texas Gas is made up of two components, namely a gathering charge and a transportation charge. The gathering charge consists of 50 cents per Mcf per month of demand plus 1.7 cents per Mcf commodity charge for an average rate at 100 percent load factor of approximately 3.34 cents per Mcf.

This rate is applicable to the cost of service of new and existing facilities on the Texas Gas System which are required to deliver all of Hope's gas to a point in Acadia Parish which point is in the vicinity of Rayne Field.

Using an initial base price plus tax of 23.55 cents per Mcf shown on sheet 10 of Schedule 1 of Exhibit X-6 plus the 3.34 cents gathering cost, the cost of the gas at Opelousas would be 26.89 cents per Mcf.

Mr. Deakins: I now offer Exhibit X-7 and tender the witness for cross-examination.

Presiding Examiner: That will be taken under advisement. I will rule on that after the cross-examination.

Mr. Lewnes: I have a couple of clarifying questions.

Presiding Examiner: Mr. Lewnes.

Mr. Lewnes: Mr. Jennings, have you made a study showing what each Mcf produced at Rayne Field would cost Texas Eastern to move it to Opelousas?

The Witness: I have made my engineering study of the cost of transportation from the point at which our pipeline receives the gas to the main line system, namely the lateral line from Rayne Field to our system.

Mr. Lewnes: You haven't made a study relating to the total cost?

The Witness: No.

Mr. Lewnes: In your reference to some compression that will be required in, I think you said, the latter third of the depletion period, was that in reference to the Rayne Field gas or was that in reference to the gas taken from these other fields?

The Witness: I was referring to the gas which we purchase in South Texas and along the Wilcox Trend Gathering System.

Mr. Lewnes: Will any compression be required in Rayne Field?

The Witness: I couldn't answer that, Mr. Lewnes.

Mr. Lewnes: Would you state how much fuel will be taken from the residue gas stream from Rayne Field?

The Witness: I have no idea.

Mr. Lewnes: Could you state who would have the answer to both of the previous questions?

The Witness: Excuse me, do you mean fuel in Rayne—

Mr. Lewnes: No, let me refer you to page 2 of Exhibit X-2

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wherein is listed the residue gas under column C. Could you state how much fuel will be taken from this residue gas before it gets to Texas Eastern's main line?

The Witness: I have no idea. The exhibit is not mine. In fact, I haven't even seen it.

Mr. Lewnes: Well, could you state who could give us the answers to both of those questions?

The Witness: One of our later witnesses, Mr. John Jacobs, I am quite sure can give it to you.

. . . . . .

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John C. Jacobs

was called as a witness, and having been first duly sworn, testified as follows:

Direct Examination

By Mr. Deakins:

Q. Please state your name and place of residence? A. My name is John C. Jacobs, and I reside in Houston, Texas.

Q. What is your present duty and by whom are you employed? A. I am employed by Texas Eastern Transmission Corporation as vice president in charge of its gas supply.

Q. What has been your education after you were graduated from high school? A. I attended Georgia Tech and received a degree in chemical engineering. Thereafter, I was graduated from Yale Law School with an LLB Degree.

Q. What has been your business experience since you

were graduated from law school? A. 1939 through 1944 I worked as a processing engineer with the then Standard Oil Company of Louisiana, in the Baton Rouge Refinery. During the years 1944, 1945, and 1946,

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I worked as a supervisory engineer in Caracas, Venezuela, with the Creol Petroleum Corporation. In this job my responsibilities concerned the estimation of oil and gas reserves, the evaluation of producing properties, the preparation of development programs for newly discovered fields, and the planning and execution of gas conservation projects including the design, construction, and operation of natural gasoline and pressure maintenance plants.

In the years 1948 through 1951 I was employed by the Nebo Oil Company of Dallas, Texas, as attorney-engineer in which job my responsibilities covered all phases of the oil and gas producing business, including obtaining leases, negotiating drilling contracts, supervising the drilling and completion of oil and gas wells, the design, construction, and operation of natural gasoline and cycling plants, and the unitization of producing properties.

During the years 1951 through 1953, I practiced law with offices in Dallas, Texas, and my practice consisted almost entirely of representing independent oil and gas producers in all phases of the business.

During the years 1953 through 1955, I served as chief executive officer of Wilcox Trend Gathering System, Inc., of Dallas, Texas. During my employment with Wilcox Trend, engaged in many activities, including, but not limited to, the negotiation of some 125 gas purchase and gas

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sales contracts and the sales contract between Wilcox Trend and Texas Eastern.

In my capacity as chief executive officer of the company,

(1878)

I became familiar with the operation of a natural gas transmission system subject to regulation by the Federal Power Commission, including the handling of problems related to its over-all gas supply, as well as the matter of disposing of gas which the company had acquired by purchase.

In other words, I became familiar, in my opinion, with the operation of a major natural gas transmission system, particularly with reference to problems related to gas supply and acquisition.

Since 1955 I have been the vice president of Texas Eastern Transmission Corporation where all phases of the gas supply of the Texas Eastern system have been my responsibility.

Q. Have you previously testified in these proceedings? A. In the initial stages of these proceedings my predecessor testified and in the reopened proceedings, I testified with reference to matters dealing with the acquisition of the properties of Rayne Field and the negotiation of the agreements for the acquisition of the leases with the sellers.

Q. Are you familiar in a general way with the testimony which Mr. Osborn will present in these proceedings?

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A. I am.

Q. Did you furnish certain information to Mr. Osborn which was the basis of his testimony? A. I did.

Q. What was the nature of that information? A. I supplied Mr. Osborn the information necessary to his preparation of the exhibits showing the estimated future cost of operating the Rayne Field property by Texas Eastern. This information is based upon the Rayne Field legal documents, the DeGolyer & MacNaughton reserve and availability studies which appear in these proceedings as Exhibit X-2 and estimates based on the experience of Texas Eastern and of the oil and gas industry in the operation

of oil and gas producing properties which I can describe in detail.

Mr. Deakins: Mr. Examiner, I have an exhibit entitled "Estimated Residue Gas Production, Rayne Field, Acadia Parish, Louisiana, 1961 through 1989," which I would like to have marked as Exhibit X-5. It consists of 14 pages.

Presiding Examiner: It will be marked Exhibit No. X-5 for identification.

(The document referred to was marked Exhibit No. X-5 for identification.)

By Mr. Deakins:

Q. Now, Mr. Jacobs, referring you to Exhibit X-5, please state in general terms what that exhibit is and by whom

it was prepared? A. Exhibit X-5 is the back-up of the figures which I furnished Mr. Osborn and which are actually the basis of his exhibit. Exhibit X-5 was prepared under my supervision and direction.

Q. Referring you now to page 1 of Exhibit X-5, please state its source and what that is concerned with? A. Page 1 of Exhibit X-5 is a tabulation showing the estimated volume of gas to be produced from Rayne Field for each year of the life of the field, commencing in the year 1961 and ending in the year 1989. This tabulation is identical with the first and second columns on the lefthand side of page 2 of the DeGolyer & MacNaughton availability exhibit which has been numbered Exhibit X-2, and was put into this Exhibit X-5 for the purposes of continuity and for ready reference by anyone who examines Exhibit X-5.

Q. That was the estimated annual production in MMcf for the years 1961 through 1989 with a total which is the estimated recoverable residue gas from the Rayne Field, is that not a fact? A. That is correct. The total is 924,687

MMcf which figure was taken from the DeGolyer & MacNaughton Exhibit X-2.

Q. Why was it necessary for you to have these figures shown on page 1 of Exhibit X-5?

A. The annual figures as set forth on that Exhibit X-5 at page 1 represent our estimate of a reasonable method of producing the Rayne Field reserves throughout the life of the field and it is the necessary beginning point for the purpose of making a representative study of the cost of making Rayne Field gas available to the Texas Eastern system.

Q. Referring you now to page 2 of Exhibit X-5, please state what that shows? A. Mr. Marshall of DeGolyer & MacNaughton has testified that it will be necessary for Texas Eastern to drill four additional wells during future years in order to obtain the quantities of gas set forth on page 1 of Exhibit X-5. Page 2 of Exhibit X-5 shows the years in which the four required new wells are to be drilled and Texas Eastern's estimate of the required investment for the drilling of such new wells, the estimated required investment is broken down into tangible and intangible costs which breakdown is based on Texas Eastern's experience of the cost of such matters at the present time.

The total investment in future new wells at Rayne Field is estimated to be $2 million.

Q. What is the basis of your estimate of the cost for the drilling and completion of those wells? A. Our estimate for the cost of the drilling and

completion of the four future new wells at Rayne Field is based on Texas Eastern's experience in Rayne Field and Texas Eastern's knowledge of industrywide experience in drilling and completing oil and gas wells throughout the

Gulf Coast area and particularly in South Louisiana to similar depths and formations.

As in all other parts of Exhibit X-5, the estimates on page 2 of Exhibit X-5 represent only our estimate of the cost of drilling those four wells which is of necessity based on present costs inasmuch as the actual expense at such future time is not known and has not been experienced.

In this instance as in all other cases in these exhibits, we have not attempted to trend the costs of drilling or any other costs to fit costs which will be incurred in some future year such as 1971 or '72 because that is impossible. At the same time it should be pointed out that neither have we trended the income to future values to be received from the sale of gas or liquids from the Rayne Field properties in the instant studies, so the matters have been treated consistently.

Q. Referring you now to page 3 of Exhibit 5, please state what that shows. A. You will recall that Mr. Marshall of the firm of DeGolyer & MacNaughton also testified that he had advised Texas Eastern as to the number of well work-overs which

would be necessary in the future at Rayne Field and the year in which such work-overs will occur, in order that the annual quantities of gas shown on page 1 of Exhibit X-5 may be produced.

Page 3 of Exhibit X-5 sets out my estimate of the cost to Texas Eastern of the well work-overs indicated to be necessary by Mr. Marshall.

These costs are based upon costs incurred by Texas Eastern in drilling, completing, operating, and working over wells throughout the Gulf Coast area with special emphasis upon our knowledge of industrywide experience in South Louisiana when working over wells of the depths and in the formation and at pressures similar to those at Rayne Field.

(1883)

Page 3 of Exhibit X-5 also sets out my estimate of a split between tangible and intangible expenses involved in the work-overs of 30 percent tangible and 70 percent intangible expenses. This split between tangible and intangible expenses is again based upon the experience just outlined.

Page 3 of Exhibit X-5 further shows that all of the $371,000 work-over cost will be recovered by Texas Eastern with the exception of $1181. The term "recovered" as used here means that Texas Eastern will be reimbursed for the well work-over costs by the owners of the liquids out of separator liquids produced at Rayne Field in accordance with the legal

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documents under which the leases were purchased by Texas Eastern.

Texas Eastern has the right of such recovery until such time as the liquid payments to the former owners of the property terminate, after which time although Texas Eastern has no longer any right of recovery out of liquids, Texas Eastern enjoys a compensating factor, the income from all liquids, which income will more than bear this and all other expenses of development and operation of the leases.

The liquid production payments terminate when approximately 75 percent of the gas has been produced. In the case of some of the small purchases made subsequent to the purchase from Continental Oil Company, et al, the production payments will terminate as early as 1970, with a consequence that some small portions of the 1971 and 1972 work-over costs do not fall in the "recoverable" category.

As I have stated previously, the "nonrecoverable" costs amount to 1181 dollars. However, the liquid income to Texas Eastern allocable to the working interest from which

the production payment has terminated will more than cover the $1181 share of the well work-over costs.

Q. Referring you now to page 4 of Exhibit X-5, please state what that is? A. Page 4 of Exhibit X-5 sets out the cost to Texas Eastern by years for estimated replacement of tubing in the

Rayne Field wells which on the basis of experience, might be necessitated by corrosion. I have estimated that tubing replacements might be required in each well every 10 years and that each replacement of tubing will cost $75,000. These estimates of tubing life and replacement costs are based upon our past experience and the past experience of others in the industry in operating gas wells to the depths and at the pressures which exist at Rayne Field.

In connection with tubing life, I should state that the tubing at Rayne Field is plastic-coated and that the technical advances of plastic-coated tubing will definitely extend the life beyond that expected for uncoated tubing.

Page 4 consistent with the other pages of Exhibit X-5 which have been described, sets out a breakdown of the total estimated cost of tubing replacements of $2,850,000 into the recoverable and nonrecoverable categories.

Inasmuch as Texas Eastern is entitled to recoup those sums and is also divided to indicate that share of the total expenditure which represents tangible expenses and that share which represents intangible expenses which are estimated on the basis of my knowledge of such costs.

Q. Now, referring you to page 5 of Exhibit X-5, please state what that shows? A. Page 5 of Exhibit X-5 sets forth my estimate of the required investment to tie the four new wells to be drilled

as set forth on page 2 of Exhibit X-5 into the Central Rayne Field separator plant which investment is in the amount of $360,000.

Q. What was that figure? A. Which is in the amount of $360,000. As is the case with the prior described pages of Exhibit X-5, the figures on page 5 are broken down to show recoverable and nonrecoverable portions of the total expenditures all of which are tangible costs and are based on actual experience of such costs which have been incurred by Texas Eastern.

Q. Referring you now to page 6 of Exhibit X-5, please state what that is? A. Page 6 of Exhibit X-5 sets out the estimated cost of a low pressure gathering system which will be installed at Rayne Field in the future to permit the gathering of gas from wells with lower wellhead pressures when such pressures have been reduced by production to a central point in the field under a gathering arrangement involving high pressure and low pressure systems and which will result in the lowest reasonable operating cost.

Again and consistent with the prior pages of Exhibit X-5, the indicated investment of $550,000 is shown to be tangible and completely recoverable out of liquids. In this case as in the case of the estimates on page 5, these estimates are based upon our estimates of present costs for similar

facilities.

Q. Referring you now to page 7 of Exhibit X-5, state what that demonstrates. A. Page 7 of Exhibit X-5 sets forth an estimated investment in future field compression facilities at Rayne Field of $4,800,000, which would be occasioned by the inevitable gradual reduction in flowing

wellhead pressures at Rayne Field as the reservoirs are depleted of their recoverable reserves of natural gas.

All of the $4,800,000 investment is recoverable out of liquids with the exception of $48,496 and all of the investment falls into the tangible category.

Q. How do you estimate that it will be necessary to install compression in the years that you have shown and at the cost which you have shown on page 7 of Exhibit X-5? A. The investment in compression facilities shown on page 7 of Exhibit X-5 is based upon an investment of $300 per installed horsepower of field compressors which figure is accepted in the industry as a reasonable cost of such compression. The number of horsepower were calculated on the basis that gas will be compressed to 1050 p.s.i.g. central point delivery and on the basis of the flowing well-head pressures and volumes given us by Mr. Marshall of DeGolyer & MacNaughton as indicated in his testimony.

Q. Referring now to page 8 of Exhibit X-5 state how the

well operating costs and maintenance set out there were determined as estimated for each year? A. The referred to operating and maintenance costs are based upon an estimate of $1500 per month per well completion to cover all direct well maintenace expenditures such as corrosion control, all well repair work other than work-overs and tubing replacement, all direct well labor, and all overhead charges including direct division and main office overhead.

The figure of $1500 per month per well completion is based upon Texas Eastern's experience in operating the Rayne Field wells since July 27, 1959. Page 8 of Exhibit X-5 is also arranged in columns to show that $6,035,500 of the estimated $11,141,280 total well operation and maintenance costs will be recoverable out of the liquid production payment.

As I have heretofore explained, the value of the liquids

after the expiration of the production payment will exceed all development and operation costs.

Q. Now referring you to page 9 of Exhibit X-5 which deals with compressor operating costs, please state the basis of those estimates. A. The compressor operating costs set forth on page 9 of Exhibit X-5 cover all operating and maintenance expenses with the exception of compressor fuel and are based upon an

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estimated expenditure of $15 per brake-horsepower in operation per year.

The $15 figure is based upon Texas Eastern's experience and its knowledge of industrywide experience in the operation of field compressors and is reasonable. Page 9 of Exhibit X-5 also indicates that $1,197,639 of the total compressor operating costs of $2,340,000 will be recoverable out of the liquid production payment under the pertinent agreements.

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Q. What does page 10 of Exhibit X-5 show? A. Page 10 of Exhibit X-5 is an estimate of the revenues which will be realized by Texas Eastern from the sale of its net interest in the production of separator liquids. The figures on page 10 of Exhibit X-5 are based upon a realization of $3 per barrel of condensate, which is equal to the present selling price of $3.20 per barrel, less 20c per barrel severance tax levied by the State of Louisiana. The column on the left-hand side of page 10 of Exhibit X-5, entitled "Gross Condensate" sets forth gross condensate production in barrels for each year of the life of Rayne Field. These figures are identical with those set forth in column D of page 2 of Exhibit X-2, which was the testimony of Mr. Marshall, of the firm of DeGolyer and MacNaughton.

As shown on page 10 of Exhibit X-5, 81.58729% of the

gross condensate production is attributable to the working interest owned by Texas Eastern at Rayne Field. Under the deeds which cover the production of liquids at Rayne Field, Texas Eastern is entitled to retain all of the income from the sale of separator liquids after the termination of the liquid production payments retained by the former owners.

Page 10 indicates that 4,154,110 barrels of condensate will come to Texas Eastern free of production payments, and will have a value of $12,462,330.

Q. Referring you now to page 11 which is entitled

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"Revenues from Sale of Plant Liquids Attributable to Texas Eastern's Net Interest in Production," please state the source of the figures shown there. The source of the annual volume figures set forth in the column on the left-hand side of page 11 of Exhibit X-5, entitled "Gross Plant Liquids" is column E of page 2, of Exhibit X-2, which was testified to by Mr. Marshall, of DeGolyer and MacNaughton.

The source of the 1.693 dollars per barrel valued on page 11 of Exhibit X-5 for plant liquids from the Rayne Field processing plant storage tanks is the present sales value of such liquids, less the Louisiana severance tax.

Presiding Examiner: Mr. Deakins, let's take the afternoon recess at this time. This seems to be a convenient breaking point.

(Whereupon, at 12 Noon a recess was had to 12:10 p.m.)

Presiding Examiner: Are you ready, Mr. Deakins?

Mr. Deakins: Yes, Mr. Examiner.

By Mr. Deakins:

Q. Mr. Jacobs, you referred to acquiring small reserves along the Texas Eastern system. Are there any large re-

(1891)

serves located in the off-shore areas? A. Yes, but the location of such reserves in the remote off-shore area would result in a cost to Texas Eastern ranging from 5 to 10 cents per Mcf in excess of the cost of Rayne Field gas.

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Q. Would the acquisition of such new gas supplies have any triggering effect on your favored nations clauses in the Texas Eastern contracts? A. Yes, the acquisition of such new gas supplies at current prevailing prices in Texas Eastern's gas supply area would trigger favored nations clauses in Texas Eastern's existing contracts by an amount in excess of $10 million per year, which will result in an additional cost to the consumer of not less than 20c per Mcf per year for a reserve comparable in size to the Rayne Field reserve. Thus, in my judgment, connecting a substitute reserve for the Rayne Field to Texas Eastern's system at today's prices under gas purchase contracts would result in an increase in cost of between 25c and 30c per Mcf over the cost of the Rayne Field gas. Some of such increase in cost might ultimately be disallowed by the Commission. However, I do not believe that anyone would predict that all of the increase would be disallowed, especially since it would include substantial capital expenditures for connecting and transporting the substitute reserves to the vicinity of the Rayne Field.

Q. Do you have any opinion as to whether Texas Eastern has realized any substantial advantages by purchasing the Rayne Field leases rather than acquiring the same gas under gas purchase contracts, such as those which were introduced in the first phase of these proceedings as Hearing Exhibits

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3-C, 3-D, 3-E, and 3-F? A. My entire testimony has elaborated the many advantages to Texas Eastern, its custom-

ers, and the consuming public of the acquisition of Rayne Field through the leasehold purchase arrangement. The principal advantages may be summarized as follows: (a) by purchasing the leasehold interest, Texas Eastern avoided the triggering of favored nations clauses and also avoided any effect on future price redetermination clauses of any nation triggering would amount to some 20¢ per Mcf of Rayne Field gas.

(b) The Rayne Field gas has been acquired by Texas Eastern at a lower cost than any other gas which was available to Texas Eastern to meet the demands which are of record of its customers and the ultimate consumer. Not only has the Rayne Field gas been acquired at a cost less than the prevailing area price, but the reduction in gathering and transportation charges which flow from the acquisition of a large reserve located adjacent to Texas Eastern's main line are in the order of magnitude of 5¢ to 10¢ per Mcf. The lower costs are also the consequence of the dollar consideration which was negotiated for the purchase of the Rayne Field leaseholds together with such contractual arrangements as that whereby Texas Eastern can recover compression and operating expenses out of the liquids produced at the field.

By way of a comparative example, if Texas Eastern had purchased a comparable volume of south Louisiana gas from scattered smaller fields at today's prices, which range upward of 24¢ Mcf, Texas Eastern would also have incurred an increase in gathering and transportation costs of at least 5¢ per Mcf, whereas the Rayne Field lies practically adjacent to our lines and the gathering and transportation cost to put Rayne Field gas in our main line at Opelousas, Louisiana, is approximately 0.4¢ per Mcf.

The increase gathering and transportation cost would mean that the gas in our example would have cost Texas

Eastern 29¢ per Mcf. In addition, favored nation increases of 20¢ per Mcf would have been incurred. The total cost of such gas to Texas Eastern would have been 41¢ per Mcf, a figure, the magnitude of which emphasizes the benefits to the consumer of the Rayne Field acquisition by Texas Eastern.

(c) The foregoing discussion does not give an exact dollar value to the advantages to Texas Eastern growing out of the flexibility of deliveries of gas inate in the complete ownership of a reserve of the size of Rayne Field, which is approximately one trillion cubic feet of gas, but the advantages to be gained have great value, as will be seen.

In the supplement to Texas Eastern's application filed after the Commission's order of July 14, 1961, it is shown that since Texas Eastern acquired Rayne Field, deliveries out

of the field have varied from zero Mcf per day to as much as 181,679 Mcf per day. This is an extremely wide variation when compared to the plus or minus 20% variation in deliveries possible under many south Louisiana gas purchase contracts and the 25% variation in deliveries permitted under the former gas purchase contracts at Rayne Field. This wide range in deliverability is of great importance in operating a pipeline system to meet the demands of consumers, although no quantitative Mcf is placed on such value to Texas Eastern.

For example, at times during peak sales demand in the winter season, freezing storms, the so-called "northers" come into the Gulf Coast supply area, with the consequence that deliveries may cease at any number of sources of small supply as a result of the low temperature atmosphere produced by the storm. Under the circumstance, Texas Eastern can call on Rayne Field for large quantities to offset

the loss in supply due to freezing and thus obviate the curtailment of any deliveries to the consumer. On the other hand, many of Texas Eastern's contracts, as is customary in the Gulf Coast supply area, contain the so-called "take or pay for" provisions under which the pipeline buyer is obligated to either take or pay for a specific quantity of gas each year, whether taken or not.

The ability to reduce deliveries from Rayne Field as compared with gas purchase contracts is of considerable advantage

to any pipeline charged with the responsibility of providing gas for the consumer in the quantities and at the times the consumer needs gas in being able to balance the overall operation of the pipeline so that the specified quantities of gas are taken under the several take or pay for gas purchase contract provsions.

(d) Rayne Field represents the acquisition of a very large reserve which is located close to Texas Eastern's main line. A large reserve in an advantageous location presents a more attractive proposition to Texas Eastern than the other reasons outlined hertofore. The advantage to the public of the acquisition by a natural gas company, because of the size and location of reserves, have been recognized under the Natural Gas Act as factors which must definitely be considered in deciding a proper field price for gas. For example, due primarily to the location factor, gas prices approved under the Natural Gas Act in New York, Pennsylvania, and West Virginia average 25 to 30 cents per Mcf, as set forth in the recently issued Federal Power Commission report entitled "Sales by Producers to Interstate Natural Gas Companies—1960," which prices are considerably higher than gas prices in the Gulf Coast area.

To summarize all of the foregoing, the Rayne Field leasehold acquisition provides a gas supply to Texas Eastern

at a definitely lower price than could gas be made available from any alternative source of supply, then or now. Indeed, Rayne

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Field gas under the leasehold acquisition which has been worked out by Texas Eastern will cost the ultimate consumer, if triggering of favored nations clauses is ignored, from five to ten cents per Mcf less than with gas from any alternative source, and will cost the ultimate consumer from 25 to 30 cents less per Mcf than gas from any alternative source if the tiggering of favored nations clauses is taken into account.

I have discussed at length the difficult program which has been in effect as Texas Eastern's gas-buying policy aimed at holding gas purchase costs to a minimum, or in words apropos of Federal Power Commission regulation to hold the line.

In my opinion, on the basis of the Rayne Field cost as shown in the record of those reopened proceedings of testimony in these proceedings regarding the cost of gas from alternative sources of supply to Texas Eastern, of evidence regarding advantages inherent in Rayne Field from such standpoints as location, and flexibility in deliveries, of testimony regarding field prices for other gas purchase contract gas in south Louisiana and the gathering and transportation cost of such gas, and of the opinions written where the courts have directed the Federal Power Commission to consider holding the line in its certificate activity, the acquisition of Rayne Field gas by Texas Eastern Transmission Corporation through the

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acquisition of the leasehold interest holds the line.

While it is, of course, not exact as to what will be the future history of this field, there is also the definite possi-

bility of future discoveries and production history which increase the gas reserves and at the same time decrease the net cost per Mcf of gas produced from Rayne Field. This has been indicated in the testimony of Mr. Olson in connection with the new Homeseekers D-2 and D-4 sands and, of course, there may be others.

Mr. Deakins: Mr. Examiner, I now offer Exhibit X-5 and tender the witness for cross-examination.

Presiding Examiner: The offer will be taken under consideration.

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Mr. Lewnes: On page 13 of the same exhibit could you reconcile the figure on the bottom of 990 million Mcf, with the figure appearing on the bottom of page 1 of the same exhibit?

The Witness: Yes, the 990 million Mcf figure set forth at the bottom of page 13 represents the total field reserves

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at the time Texas Eastern took over the field. If you will go back to the record in the prior proceedings, the DeGolyer and MacNaughton reserve study set forth the recoverable pipeline gas reserve of 988 billion cubic feet which, in my testimony, I rounded off to 990 billion.

Now if you will take—what we are doing is reconciling the 990 billion figure with the DeGolyer and MacNaughton exhibit which was testified to today, which is Exhibit X-2. If you will go to the page of Exhibit X-2 which is entitled "Estimated Residue Gas, Condensate, and Plant liquid Reserves," the residue gas reserve is shown to be 924,678 MMcf, on line 27. On line 19, the cumulative production is shown to be 82,414 MMcf. If you add those two numbers together the original recoverable reserve was 1 million 007 thousand 092 Mcf. Now if you will go back to DeGolyer

and MacNaughton reserve exhibit in the prior hearings which set forth the 988 billion cubic foot number, the number comparable to line 27, on the page you are looking at, is 988,771 MMcf. To that was to be added past production of 17,018 MMcf for a total original recoverable reserve of 1,005,789 Mcf, so the 990 figure is consistent with the DeGolyer and MacNaughton reserve estimate which has been put into evidence today as well as the prior reserve exhibit that was put in with DeGolyer and MacNaughton, as far as the total amount of gas which has been purchased by Texas Eastern is concerned.

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By Mr. Deakins:

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Q. We have heretofore discussed the gas purchase contracts covering the Erath and West Cameron Fields listed on that exhibit. In your opinion, are the reserves covered by any of the other gas purchase contracts shown thereon comparable to the Rayne Field reserves? A. No, none of such reserves are comparable to the Rayne Field reserves in magnitude. Further, many of such reserves are located in much more remote, inaccessible areas.

Q. In your opinion, can the final certificated prices shown on Exhibit X-6 be compared to the cost of the Rayne Field acquisition without adjustment? A. Most certainly not. In my opinion, substantial adjustments upward must be made to the prices shown on Exhibit X-6 in order to obtain any valid comparison between such prices and the cost of the Rayne Field lease acquisition particularly if we are concerned with the ultimate cost of the gas to the consumers in our market area.

The fact that the reserves covered by such contracts are relatively small in comparison to the Rayne Field reserve

requires a substantial upward adjustment in the gas purchase prices for comparative purposes.

For example, gas purchase contracts entered into by the United Gas Fuel Company at the time it entered into the Erath Field contract contained prices ranging from 16 cents to 20 cents per Mcf, depending upon the size of the reserve

contracted for and initial prices under American-Louisiana gas purchase contracts ranged from 18.25 cents to 20 cents per Mcf, depending upon the size of the reserve contracted for.

Moreover, the relatively small gas reserves covered by the contracts listed on Exhibit X-6 are scattered and some of such reserves are located in relatively inaccessible offshore and bay water areas so that the cost of gathering and transporting a volume of gas from these individual fields equivalent to the volume available at Rayne Field would add several cents to the ultimate cost to the consumer.

Additional savings in costs are realized by acquiring a large volume of gas from a single field, rather than from a number of different fields, such as savings in compression, maintenance, and dispatching costs. In addition, all of the contracts shown on Exhibit X-6 contain provision for fixed price escalations and most of such contracts also contain provision for indeterminate price increase through favored nation price redetermination and other similar indeterminate pricing clauses.

increases. When all of the advantages of the Rayne Field

As I have heretofore pointed out in my testimony, it is recognized throughout the industry and by the Federal Power Commission that the sale of gas for a fixed price should and does command a price higher than the prevailing price under contracts containing provision for indeterminate price

increases. When all of the advantages of the Rayne Field lease acquisition to Texas Eastern and its customers are taken into account, it would require an upward adjustment of between 8 and 12 cents per Mcf depending upon the location and size of the particular field involved to the location and size of the particular field involved to the contract prices shown on Exhibit X-6 to make such prices comparable to the Rayne Field lease acquisition costs.

Q. In your opinion, is the cost of the Rayne Field leases in line with the prevailing area prices? A. In my opinion, the cost of the Rayne Field leases is far below the prevailing uncontested certificated gas purchase contract prices in the area.

Q. Does Texas Eastern need the Rayne Field gas reserve to meet its customer requirements? A. Texas Eastern has a most pressing and urgent need for such gas reserves. For example, in this proceeding the Commission authorized Texas Eastern to expand its main line transmission facilities and make additional sales in the amount of approximately 100,000 Mcf per day.

Subsequently in Docket No. 60-122 Texas Eastern received temparary authority to make an additional 50,000 Mcf per day available to its customers and in Docket No. CP61-203, Texas Eastern proposes an expansion involving sales of 225,000 Mcf per day to meet the urgent additional requirements of its customers.

Obviously if Texas Eastern's system should be deprived of the very large and valuable Rayne Field gas reserve, we would be severely handicapped in meeting even our existing commitments to our customers and our ability to continue to supply their increased demands would be placed in serious jeopardy.

Q. If Texas Eastern should be required to disconnect the Rayne Field reserve from its system, could Texas Eastern replace such reserve along its system with a comparable quantity of gas within a reasonable period of time? A. In my opinion, it would require several years to replace the Rayne Field gas reserve with a comparable quantity of gas. To my knowledge, there are no easily accessible gas reserves on the market in Texas Eastern's gas supply area of a size comparable to the Rayne Field reserves.

Therefore, in order to obtain a comparable quantity of reserves along its system, Texas Eastern would have to attempt to negotiate a large number of gas purchase contracts for much smaller gas reserves scattered along its system. It would obviously take many months to attempt to negotiate such contracts and even if we should be successful in acquiring a comparable size reserve, we would encounter an additional delay of many more months in certificate proceedings and the construction of lateral and gathering lines to these fields.

Q. If Texas Eastern were successful in negotiating

gas purchase contracts for such reserves, could they be acquired and delivered to Texas Eastern's customers at a cost equal to the cost of acquiring and delivering the Rayne Field gas reserves? A. In my opinion, it would be impossible to acquire such a gas supply at a cost equal to the Rayne Field leases. The exhibits of Mr. Furman in this proceeding reveal that the current prevailing price for gas in South Louisiana exceeds Texas Eastern's acquisition cost in the Rayne Field leases and it is common knowledge that the prices being paid and offered for gas along the route of Texas Eastern's pipelines in Texas is rapidly approaching the South Louisiana price level.

The added cost of gathering and transporting the gas from a number of scattered relatively inaccessible fields

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to the Rayne Field Vicinity would, in my judgment, increase the cost of such new gas supplies to the consumers in an amount ranging from 5 cents to 10 cents per Mcf in excess of the cost of the Rayne Field gas.

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Miss Suchow: Now, I would like to tie down the reserve figure that you were relating for Mr. Lewnes before, to the geological exhibit. Did I understand you to say that the 990 million Mcf shown on page 13 of your exhibit is really a rounding of an actual figure of 998,771,000 Mcf?

The Witness: 998,771,000 Mcf.

Miss Suchow: Is that the amount of the gas in place at the time that Texas Eastern bought the leases?

The Witness: Yes, that is not the gas in place, it was

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the recoverable pipeline gas.

Miss Suchow: The recoverable gas at the time Texas Eastern asquired the leases?

The Witness: Yes.

Miss Suchow: Now, did I correctly understand you to say there had been 17,000 MMcf production prior to that time?

The Witness: Yes.

Miss Suchow: So that going back to that geological exhibit, X-2, I believe, line 19 of the first sheet which shows estimated cumulative production to January 1, 1961 of $82,414 MMcf, that would reflect 17,000 MMcf production prior to the time that Texas Eastern acquired the leases and approximately 65,000 from when to when, sir?

The Witness: From the time we acquired the leases until January 1, 1961.

Miss Suchow: From the time you acquired the leases, that would be in July of 1959?

The Witness: July of 1959.

Miss Suchow: Thank you. That is all.

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1935

Stewart P. Osborn

was called as a witness, being first duly sworn, and testified as follows:

Direct Examination

By Mr. Deakins:

Q. Please state your name and place of residence. A. My name is Steward P. Osborn, and I am a resident of Houston, Texas.

Q. What is your present duty and by whom are you employed?

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A. I am employed by Texas Eastern Transmission Corporation as Comptroller.

Q. Have you previously testified in these proceedings? A. I have.

Q. Have you prepared or had prepared under your direction exhibits for presentation in this case? A. I have.

Q. What is the nature of those exhibits? A. In the order reopening the proceedings, prescribing procedures and fixing the date of the hearing, the Commission in ordering clause B(3) and (4) ordered Texas Eastern to prepare the following exhibits: An exhibit showing the proposed method of accounting by Texas Eastern for the Rayne Field transaction and all costs incident thereto, and an exhibit showing the cost of making natural gas available from Rayne Field to Texas Eastern's system, and reflecting the estimated annual changes in the cost of the Rayne Field gas through to the estimated year of abandonment.

These exhibits were prepared by me and persons under my direct supervision, and are marked for identification purposes as Exhibit X-3, which is the proposed method of accounting, and Exhibit X-4, cost of making natural gas in Rayne Field available to the Texas Eastern system.

Mr. Deakins: Mr. Examiner, I presume it will be agreeable with the Examiner to continue the marking in the manner

suggested by the Examiner.

Presiding Examiner: That will fill out the numbers in my numbering system.

(Whereupon the documents referred to were marked for identification as Exhibits X-3 and X-4.)

By Mr. Deakins:

Q. Please state in general terms what Exhibit X-3 shows. A. In accordance with the Commission's order, Exhibit X-3 shows the proposed method of accounting by Texas Eastern for the Rayne Field transaction, and all costs incident thereto. This exhibit is prepared in narrative form and is self-explanatory.

Q. Now referring you to what has been marked for the purpose of identification Exhibit X-4, entitled "Rayne Field Cost of Gas, Years 1961-1989," please explain column by column the items set out thereon. A. Column A states the years through the estimated year of abandonment. The figures in Column B show the annual amortization of the note payments on a unit of production basis. The total amount of column B is $117,487,000.

Q. I notice that for the years 1961 through 1973, the charge is shown at the same figure while thereafter it reduces until there is a very small item the 29th year. Please state upon what basis these write-offs were estimated.

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A. The annual costs shown in column B are related to the working interest production of natural gas each year. The total annual production was estimated by DeGolyer and MacNaughton and is shown in Exhibit X-2. To the annual working interest production we applied a unit price of 15.5731 cents per Mcf to determine the annual depletion of the gas reserve.

The unit price was arrived at by dividing the total of $117,487,000 by the total recoverable working interest reserve which is 754,420 MMcf. The total working interest reserve of 754,420 MMcf is 81.58729 per cent of the total estimated reserve at January 1, 1961, which amount was 924,678 MMcf. The working interest percentage was furnished to me by Mr. Jacobs and is shown in Exhibit X-5.

Q. Referring you now to column C, how did you compute the depreciation of the tangible plant as shown in that column? A. The annual depreciation expense each year was computed on a unit of production basis. The unit of production basis relates to the recoverable working interest reserves. The total amount of depreciation for the years 1961 through 1989 is $6,190,700, and is based on the balance of tangible plant as of January 1, 1961, and on future additions furnished by Mr. Jacobs. These additions are shown in detail in Exhibit X-5.

Q. How did you calculate the unit cost which you used in making this determination?

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A. The depreciation rate per Mcf was determined by dividing the balance of undepreciated property at January 1 of each year by the remaining Mcf applicable to the working interest reserves at January 1 each year. This rater per Mcf times the working interest production during the year developed the estimated depreciation expense for that year.

Q. Referring you now to column D of Exhibit X-4, entitled "Depletion of Natural Gas Producing Leaseholds" state on what basis that depletion was computed. A. Depletion of natural gas producing leaseholds was computed on a unit of production basis. The balance of leasehold investment to be written off as of January 1, 1961, was $7,956,300, and this was written off at a rate of 1.0546¢ per Mcf of working interest production. The unit price was arrived at by dividing the amount of $7,956,300 by the total recoverable working interest reserves of 754,420 MMcf.

Q. What was the basis of amortization of intangible drilling costs which you have shown in column E of Exhibit X-4? A. The annual amounts of amortization of intangible drilling costs were computed on a unit of production basis. The unit of production basis relates to the recoverable working interest reserve. The total amount of amortization of intangible drilling costs is $2,416,800, and is based on the balance of intangible drilling costs as of January 1, 1961, and on future additions supplied to me by Mr. Jacobs. These costs are also

supported by Exhibit X-5.

Q. Now how did you calculate the unit cost which you used in making this determination? A. The unit cost per Mcf with respect to amortization of intangible drilling costs was determined in the following manner: The unamortized balance of intangible drilling costs at the beginning of each year was divided by the recoverable working interest reserve at the beginning of each year, which gave me a rate per Mcf. I applied this rate per Mcf to the working interest production each year to determine the annual amortization of intangible drilling costs.

Q. Referring you now to column F, what does that show? A. This is the net credit to the cost of gas in the Rayne

Field in the amount of $9,031,200. This amount is the difference between the total operating revenues received from sale of liquids of $16,413,600 and the Rayne Field operation and maintenance expenses in the amount of $7,382,400. This transaction does not take place until the production payments for liquids terminate. These various production payments start terminating in the year 1970, and the last one is in the year 1975.

The estimated liquid revenues and expenses were supplied to me by Mr. Jacobs and are also set forth in Exhibit X-5.

Q. How is the total cost of gas, as shown in Column G of exhibit X-4, computed?

A. This is a summation of columns B, C, D and E, less the amount shown in column F.

Q. How did you compute the cost per Mcf shown in column H? A. The annual costs per Mcf shown in column H were derived by dividing the amounts for each year shown in column G by the volume of working interest gas estimated to be produced during each year.

Q. You previously testified that the average cost of this working interest gas was 17.15¢ per Mcf. In the present study, the average cost of such gas is 16.57¢ per Mcf. Please explain the reduction of .58¢ per Mcf in the cost of gas which you have shown on Exhibit No. X-4. A. The amount of 17.15¢ included 15.57¢ for the amortization of the note payments and 1.58¢ for amortization of leaseholds and facilities. This was 1.58¢ was related only to the original acquisition of leaseholds and facilities from Conoco, et al., which amounted to $12,420,500.

In the present study we have included additional development costs as well as the acquisition of leaseholds and facilities of four other parties in the Rayne Field. In addition we have also included future development costs in

(1941)

Rayne Field as set forth in Exhibit X-5. All these items totaled $5,237,100, and increased the amount to be amortized over the life of the field, bringing the new amortization per Mcf up to 2.20¢. In the present study we have applied a credit

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against this amount of 1.20¢ per Mcf. This results from the liquid revenues which Texas Eastern will retain after completion of the production payments less the operating expenses of the Rayne Field. The total cost in the present study thus amounts to 15.57¢ for depletion, plus 2.20¢ for amortization, less 1.20¢ credit for liquids, or 16.57¢.

Q. Is Texas Eastern obligated to make royalty payments on the gas produced from the Rayne Field? A. Yes, the Rayne Field leases are on the usual type commercial oil and gas lease forms which obligate the working interest owner to account for royalty portion of gas produced and saved from the leases on the basis of the market value of the gas at the well.

Q. What amount per Mcf is Texas Eastern currently paying to the royalty owners under the Rayne Field leases? A. Texas Eastern is currently accounting to the royalty owners on the basis of a market value of 22.6¢ per Mcf for the royalty portion of the gas produced and saved from the leases.

Q. How is the Louisiana gas severance tax treated in your accounting to the royalty owners? A. Texas Eastern pays to the State of Louisiana gas severance tax applicable to the royalty owners so that they receive a net amount of 20.3¢ per Mcf for [illegible] royalty gas after such tax deductions.

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Q. Did you include these royalty payments in your computations of the acquisition cost of the Rayne Field leases? A. No, because I do not believe that royalty payments can

properly be considered as a part of the leasehold acquisition costs. In acquiring the Rayne Field leases, Texas Eastern acquired only the working interest in such leases and our agreement with the working interest owners had no relation to or bearing upon the payments to the royalty owners.

As I have previously explained, the royalty owners are entitled to receive the market value at the well for royalty gas but this right did not grow out of Texas Eastern's acquisition of the leases. On the contrary, it is a pre-existing right which was created by the execution of the leases.

Further, the obligation to pay royalty on the basis of the market value of gas at the well is not peculiar to the Rayne Field leases but instead is common to practically all oil and gas leases in the Gulf Coast area.

Since the royalty payments were not a part of or affected by the Rayne Field acquisition and will be the same as Texas Eastern would have paid had it acquired the leases as wildcat leases before any gas discovery and will also be the same as any producer of gas in the same area would pay, such royalty payments should not be considered as a lease acquisition cost.

In other words, the royalty payments are simply payments

which any producer must make for the privilege of producing gas regardless of when or how he acquires the leases.

Q. You have mentioned the Louisiana Gas Service Tax. Will you state whether or not you included such tax in your computation of the Rayne Field lease acquisition cost? A. No, I did not include such tax for the same reason that I did not include royalty payments. Namely, I do not consider payment of state taxes as a part of the lease acquisition costs. Louisiana gas severance tax must be paid by all producers of gas and the present tax is in the fixed

amount of 2.3 cents per Mcf, regardless of the amount paid for the leases or the market value of the gas.

Under the provisions of the statute imposing the tax, it will be reduced from 2.3 cents per Mcf to 0.03 cents per Mcf as of June 30, 1964.

Q. I think you misstated yourself. It is 0.3 cents. In other words, three-tenths of a cent per Mcf as of June 1964. A. That is correct.

Q. You stated that the tax is presently in the amount of 2.3 cents per Mcf. Does Texas Eastern pay this tax on the entire production from the Rayne Field? A. Yes, as I previously stated, the amount of tax paid with respect to the royalty gas is deducted from the royalty payments so that the net payment of the tax by Texas Eastern is applicable only to the working interest portion of the gas.

Q. Have you included rate of return to Texas Eastern in your computation of the Rayne Field lease acquisition cost? A. No, because I do not consider rate of return constitutes a part of the lease acquisition costs.

Q. Do you believe Texas Eastern is entitled to earn a reasonable rate of return on its investment in the Rayne Field? A. Yes, but I am not prepared to speculate at this time as to what that return should be. Texas Eastern does not have any rate cases pending at the present time. The rate of return which we might claim with respect to our Rayne Field investment will, of course, necessarily depend upon future circumstances and legal principles in existence if, as and when Texas Eastern may file an application for a rate increase.

Q. Have you ever prepared under your direction a study of the cost to Texas Eastern of producing its own gas? A. Yes, such a study was prepared under my direction in Docket G-12706 and G-18841, which resulted in a unit cost per Mcf of 44.34 cents for company-produced gas.

In addition, in connection with these two dockets, personnel of the Federal Power Commission Staff developed a cost of 23.2781 cents per Mcf for company-produced gas. This does not include gas from the Rayne Field.

Mr. Deakins: I now offer Exhibits X-3 and X-4 and tender

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the witness for cross-examination.

Presiding Examiner: The offer will be taken under advisement, Mr. Deakins, to be ruled upon at the conclusion of the cross-examination.

Mr. Deakins: Thank you, Mr. Examiner.

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2003

Wednesday, November 29, 1961

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2005

S. P. Osborn

was recalled as a witness, having been previously duly sworn, and testified further as follows:

Presiding Examiner: You have been previously sworn, have you not, Mr. Osborn?

The Witness: Yes, sir.

Direct Examination

By Mr. Deakins:

2006

Q. Have you prepared the back-up data from your working papers which substantiates Exhibit X-4, at the request and instance of the Staff of this Commission? A. I have.

Q. Handing you what has been marked for identification as Exhibits X-8, X-9, X-10, X-11, X-12, X-13, and X-14, will you please state which of those exhibits were the exhibits

about which I just inquired, that is with reference to back-up data? A. Exhibit No. X-8 lists the schedule of activity in the other deferred debit account for the years 1961 through 1989.

Q. Mr. Osborn, you were explaining what exhibit X-8 shows. Will you continue that explanation? A. In Column A, we show the year. In Column B we show the estimated balance in other deferred debits at January 1 of each year. Column C has the amount of note payments in the applicable years.

In Column D shown the amortization of these payments.

Q. Now, referring you to Exhibit X-4, please state what Column of Exhibit X-8 relates to what comparable column of Exhibit X-4, as back-up data? A. Column D of Exhibit X-8—

Q. That is "D" as in "dog"?

A. That is right—is the same as Column "B" in Exhibit X-4.

Q. And the total shown under "Totals" of Column "D" of Exhibit X-8 is the total figure shown on Column "B" of Exhibit X-4, am I correct? A. That is correct.

Q. What was the source of this information? A. The source of this information was based on the schedule of note payments and the estimated schedule of production from the Rayne Field.

Q. Referring you to what is marked for identification as X-9, will you please state by whom that was prepared and what it shows? A. Exhibit X-9 was prepared under my direct supervision and shows the balance included in "gas plant in service," and the related reserves for depreciation, depletion and amortization at December 31, 1960. This was taken from the books and records of Texas Eastern Transmission Corporation.

Q. Please state what columns of Exhibit X-4 are related

to Exhibit X-9. A. Exhibit X-9 relates to Columns "C," "D," and "E" of Exhibit X-4.

Q. You won't find the figures shown on Exhibit X-9 as such, in those columns, isn't that a fact?

2008

A. That is correct.

Q. Am I correct in assuming that those are a part of the figures shown in Columns C, D, and E of Exhibit X-4? A. That is right.

Q. I forgot to ask you this: Who prepared Exhibit X-8? A. X-8 was prepared under my direct supervision.

Q. Referring you to what has been marked for identification as Exhibit X-10, please state by whom that was prepared, and what it purports to show. A. Exhibit X-10 was prepared under my direct supervision and shows the estimated balance of tangible plant, natural gas producing leaseholds, and intangible drilling costs less applicable reserves at January 1 each year for the years 1961 through 1989.

Q. What was the source of the information which is shown on Exhibit X-10? A. Exhibit X-10 is based on the estimated schedule of production of the Rayne Field for years 1961 through 1989.

Q. Now will you please state to what part of Exhibit X-4 the figures shown on X-10 relate? A. The figures shown on X-10 relate to columns C, D, and E of Exhibit X-4.

Q. Is it a fact that as in the case of Exhibit X-9, these figures shown on Exhibit X-10 do not appear in Columns C,

2009

D, and E of Exhibit X-4 as such, but are a part of the figures which make up those three columns? A. That is right.

Q. Referring you to Exhibit X-11 for identification, please state by whom that was prepared and what it purports to show. A. Exhibit X-11 was prepared under my

direct supervision and shows the estimated net liquid revenues for the years 1961 through 1989. Column A of this exhibit shows the year. Column B shows the nonrecoverable operating and maintenance expense for the Rayne Field.

Column C shows the estimated separator liquids revenues. Column D shows the natural gas liquids revenues.

Column E shows the net liquids revenues and is the same figure, same total, as shown on Exhibit X-4, Column F.

Q. I notice that there are three footnotes which relate to Columns B, C, and D, of Exhibit X-11. Is it necessary to make any explanation of those footnotes, at this time? A. I do not think so. They are cross-references.

Q. They are self-explanatory? A. That is right.

Q. Did you state the basis of the information on which Exhibit X-11 was prepared and estimated? A. I will. It is based on amounts supplied and shown in

Exhibit X-5.

Q. Did you state, Mr. Osborn, to what column of Exhibit X-4 the figures shown on Exhibit X-11, particularly Column E, relate? A. I indicated that, but I will repeat it.

Q. All right. A. The amounts shown in Column E of Exhibit X-11 are the same as shown in Column F of Exhibit X-4.

Q. Referring you now to what has been marked for identification as Exhibit X-12, please state by whom this was prepared and what it purports to show. A. Exhibit X-12 was prepared under my direct supervision. It is a schedule of Rayne Field note payments, based on production estimated in Exhibit X-2, page 2, of Docket No. G-12446.

Q. That, as I take it, indicates the note payments as they will take place under the estimated schedule of production which has been presented by Texas Eastern in these proceedings, is that right? A. That is correct.

Q. Please state in general terms what Columns B, C, D, E, F, G, H, and I refer to insofar as it pertains to the interests which are covered by the notes? A. Well, it is self-explanatory: The interest of Continental Oil Company, et al, the original sellers, is shown

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under Columns B and C, is that correct? A. That is right.

Q. Dishman, et al, what interests are those shown on other exhibits? How are they referred to? A. I believe those interests are referred to in Exhibit X-5.

Q. X-5, and that is true of Kirby and Muller? A. That is right.

Q. As well as Texas Gas? A. That is right.

Q. Referring you to Exhibit X-13 for identification, please state by whom that was prepared, at whose instance, and what it purports to show? A. Exhibit X-13 was prepared under my direct supervision at the request of the Staff of the Federal Power Commission. It shows the schedule of Rayne Field note payments, assuming no accelerated installations, just as stated on the notes.

Q. That is not based upon the estimated schedule of production by Texas Eastern in these proceedings, is it? A. It is not.

Q. We have also had—I don't know whether we have had it marked for identification or not, it is X-14. Do you have a copy of that exhibit before you? A. I have.

Q. Please state by whom that exhibit was prepared.

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A. Exhibit X-14 was prepared under my direct supervision.

Q. This exhibit, likewise, was prepared at the request of the Staff of the Federal Power Commission, was it not? A. That is correct.

Q. And prepared as a supplement to Exhibit X-4, is that correct? A. That is right.

Q. State what that exhibit purports to show in addition to the items shown on Exhibit X-4. A. Exhibit X-14 shows the cost of gas as shown in Exhibit X-4, adjusted to include outside interests, as well as the Louisiana severance tax, for the years 1961 through 1989.

Q. The outside interests, does that include royalty interest, as well? A. It does.

Q. On what pressure base is that exhibit prepared? A. On a pressure base of 14.73.

Q. Have you prepared cost of service studies under various assumptions, for illustrative purposes, and with the reservation that they are not binding on Texas Eastern? A. I have prepared four such studies, and submit them for illustrative purposes, only, with the understanding and reservation that they will not be binding upon Texas Eastern

in any future proceedings as to rate-of-return rate base, rate-making principles, estimated costs or for any other purposes.

Q. I hand you what has been marked for the purpose of identification as Exhibit No. X-15. Will you please state by whom that was prepared and what it purports to show. A. Exhibit X-15 was prepared under my direct supervision. It is a cost of service study based upon the following assumptions:

In Column "B," we have taken the total cost of gas as indicated in Column "G" of Exhibit X-4.

Q. That is the same figure that appears on Exhibit X-4? A. That is right. Then to that we have added an assumed rate of return of 6 percent as shown in Column "C."

In Column "D" we have the federal income tax related to the return in Column "C."

Columns "C" and "D" have been added to Column "B" to get an estimated total cost of service.

Column "F" indicates by years at a 14.73 pressure base the average cost of this gas per Mcf.

Column "G" states the average cost on a 15.025 pressure base.

Q. Under the totals in line 31 of Column F and G of Exhibit X-15, are shown the average cost per Mcf, of gas, throughout the years covered by that exhibit at the pressure

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bases which I have indicated, is that not right? A. Yes, sir.

Q. At the top of that exhibit that is referred to as Case 1? A. Yes, sir.

Q. Referring you to Case 2, marked for identification as Exhibit No. X-16, please state what that purports to show and how that differs from Case No. 1 as shown by Exhibit X-15? A. Exhibit X-16 again states the total cost of gas contained in Exhibit X-4, Column G, to which has been added in Column C of X-16 the Louisiana severance tax on working interest gas.

Q. How much is that amount per Mcf? A. I don't have the amount per Mcf, but that is the same amount as shown in Exhibit X-14, Column "I."

Mr. Flanigam: Isn't it shown as Footnote 1 on X—

By Mr. Deakins:

Q. Referring you to Footnote 1, Column C, does that have reference to the computation of the Louisiana severance tax? A. That is correct.

Q. And that correctly explains the application of that tax in this column? A. Yes, sir.

Q. All right. Now will you please explain—

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A. Excuse me. In addition to the severance tax we have again picked up the return at 6 percent in Column E, and

the related federal income tax, in Column "F," as was shown in Exhibit X-15, Columns S and D.

Column "G" is the total cost of service as indicated under Case 2.

Column "H" is the average cost per Mcf, stated on a 14.73 pressure base.

Column "I" is the average cost per Mcf of gas at a 15.025 pressure base.

Q. Now, Mr. Osborn, referring you to what has been marked for the purpose of identification as Exhibit X-17, which is indicated to be Case 3, in the caption thereof, please state what that purports to show, by whom it was prepared and how it differs from Exhibit X-16. A. Exhibit X-17 again starts in Column "B" with the total cost of gas as indicated in Exhibit X-4, Column "G." To this has been added the Louisiana severance tax on working interest gas, as explained in Exhibit X-16, plus the royalty and outside interest gas in Column "D."

There is a footnote to Column "D"? A. That is right.

Q. What—how did you price the royalty and outside interest gas as shown on that exhibit? A. The royalty and outside interest gas was priced at a

rate of 22.1563 cents per Mcf, which is equivalent to 22.6 cents at a 15.025 pressure base.

Q. I take it the first pressure base was at 14.73 pounds? A. 14.73, that is right.

Q. What is Column "E"? A. Total before return and federal income tax.

Q. What have you added to Column "E"? A. I have added to Column "E" the return at 6 percent and the—in Column F, and in Column G the federal income tax related to such return, as shown on Exhibit X-15, to accumulate a total cost of service in Column H.

Column I is the average cost per Mcf of gas at the 14.73

pressure base, and Column J is the average cost per Mcf of gas at a 15.025 pressure base.

Q. You did not state by whom this was prepared and the source of this information. A. This was prepared under my direct supervision and again is based upon the estimated schedule of production shown in this docket.

Q. Now, referring you to what has been marked for the purposed of identification as Exhibit X-18, referred to in its caption as Case No. 4, please state what that purports to show and how that exhibit differs, and in what respect it differs, from Exhibit X-17. A. Exhibit X-18 was prepared under my direct supervision,

and again it starts in Column B, with the total cost of gas as indicated in Exhibit X-4, Column G.

Q. What have you added to that? A. To that has been added the Louisiana Severance Tax.

Q. Was that one the same basis as you have described in the other exhibits? A. That is correct.

Q. All right. A. Column B is the royalty and outside gas, interest gas, that we have shown on Exhibit X-17, to which has been added in Columns F and G returns at 6 percent, and the related federal income tax.

In addition, in the column between G and H which is marked on Exhibit X-18 as a second column F we have computed a return on our "other deferred debit account," the balance in the "other deferred debit account," at 6 percent, and the related federal income tax in column H.

Q. That relates to the addition as shown in Column F, does it not? A. That is correct.

Q. That produced the total cost of service shown in Column I, is that right? A. That is correct.

Q. And thereafter in columns J and K, at the 14.73 and 15.025 pound pressure bases is shown the average cost of gas per Mcf under that assumption, is that correct?

A. Yes, sir.

Q. Mr. Osborn, have you also calculated on an average basis a rate of return of 6.25 percent in lieu of the 6 percent used in the cost of service studies which you have just testified concerning, and which are identified as Exhibits X-15, X-16, X-17, and X-18? A. I have.

Q. State the cost of service per Mcf under that assumption. A. Under that assumption, Exhibit X-15, Column F, at 6.25 percent, the average cost per Mcf would be 18.52.

In Column G, the average cost would be 18.89.

Q. Now referring you to Exhibit X-16. A. Exhibit X-16, Column H, at a rate of return of 6.25 percent, an average cost of gas of 20.77 cents.

Column I, 21.19 cents per Mcf.

Q. Now referring you to Exhibit X-17. A. Exhibit X-17, Column I, the average cost per Mcf would be, at 6.25 percent, 21.04 cents.

Q. What is that cost at 15.025? A. 21.46 cents.

Q. Referring you to Exhibit X-18, please state the cost at the two pressure bases, on the basis of that exhibit. A. Exhibit X-18 at a 6.25 percent rate of return, the average cost per Mcf in Column J would be 24.12 cents and in

Column K, 24.60 cents.

Q. Do you have a formula that can be used to calculate the average cost under both of these bases at other increments? A. I do not have a formula, but the calculation indicates that in Exhibits X-15, X-16, and X-17, for each change of one-quarter percent, it would be approximately 1 mill and for Exhibit X-18 for each change of one-quarter percent in the return, it would be approximately 2.6 mills.

Mr. Flaningam: Would this be a convenient point to ask a clarifying question?

Mr. Deakins: Not quite, Mr. Flaningam.

Mr. Flaningam: All right.

Mr. Deakins: Mr. Examiner, I offer Exhibits X-8, X-9, X-10, X-11, X-12, X-13, X-14, X-15, X-16, X-17, and X-18, and tender the witness.

These are offered subject to the reservation stated by the witness and by Mr. Head yesterday.

Presiding Examiner: The items referred to by counsel for Texas Eastern will be marked for identification as Exhibits X-8 through X-18. The ruling on their admissibility will be reserved until the conclusion of cross examination, as I did with the other exhibits which you have offered.

(The documents referred to were marked exhibits Nos. X-8 through X-18, for identification.)

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By Mr. Lewnes:

Q. Is it correct to assume Exhibits X-15 through X-18 are based on the production contemplated in Exhibit X-2? A. That is correct.

Q. On Exhibit X-15 where you have return at 6 percent, to what exhibit and what column can we look to see where you

2023

applied the 6 percent? A. If you will look at Exhibit X-10, sir, Column E, I applied the 6 percent.

Q. Is that the year end or average plant investment? A. This is the year-end, I believe.

Q. And you have not included in the rate base an allowance for materials and supplies or working capital, other than that in Account 186? A. In Exhibit X-15, I have not included any working capital.

Q. But you have included it in some of the other

exhibits? A. No, I have not. X-15, X-16, and X-17 do not. X-18 has the balance in the other deferred debit account.

Q. In other words, you have not included materials and supplies or other working capital? A. That is correct.

Q. Referring to Exhibit X-13, am I correct that these are non-interest-bearing notes? A. That is right.

Q. In order to fully understand this, we have to go one step further, I think. Could you indicate what are the volumes of gas stated in the notes that would trigger the preceding notes and cause acceleration? Not the volumes you have taken which then triggers the notes, but

what is the maximum volume you can take under the note payments before it would trigger another note? A. Under the notes with Continental Oil, Sun Oil, General Crude and Marr, the total allowable production for the 12 months ending August 1 of 1960 and August 1 of 1961 we were allowed annually, without triggering the notes, was 31,656,524 Mcf.

Subsequent to August 1, 1961, and each year thereafter, we were allowed 40,331,631 Mcf. The volume of gas, — and this is a cumulative figure—if we exceeded the accumulation under these four instances by 3,360,969 Mcf, we would trigger an installment of the note.

Mr. Flaningam: What was the last figure you mentioned?

The Witness: 3,360,969 Mcf.

Mr. Flaningam: Thank you.

The Witness: In the Dishman transaction for the first two 12-months periods, the volume of gas was 276,360 Mcf. For the periods subsequent to August 1, 1961, the volume is 352,093 Mcf. The amount required to trigger an installment of the note in excess of an accumulation is 23,341 Mcf.

By Mr. Lewnes:

Q. That is in any given year after 1961? A. If your accumulation exceeded it.

Q. That accumulation can build up all the way through

2025

1975? A. That is right. The comparable figures for the Kirby interest for the first two years is 173,367 Mcf. For the subsequent years, it is 223,424 Mcf.

The volume required to trigger an installment is 18,618 Mcf.

For the Muller interests for the first two years, the volume is 345,695 Mcf. For the subsequent years 440,429 Mcf. The volume required to trigger an installment is 36,702 Mcf.

Texas Gas interests, for the first two years, it is 8,438 Mcf, for the subsequent years 10,750 Mcf. The amount, the volume, required to trigger an installment is 896 Mcf.

Q. Are these figures set forth in the notes, or is the some private understanding between the companies? A. I believe it is set forth in the notes.

Mr. Head: That is correct.

By Mr. Lewnes:

Q. When you referred to the gas, the gas volumes, are you referring to residue gas or pipeline gas, or are the terms synonymous? A. We have related it here to our estimated schedule of production.

Q. As contained in Exhibit X-2? A. That is right.

Q. If I take your Exhibit X-14 and add to it return at 6 percent both on net plant and other deferred debit

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account, plus the federal income tax return on both, would I get the results shown in Exhibit X-18? A. Yes, sir, you should.

(2026)

Mr. Lewnes: Thank you. We have no further questions at this time.

Mr. Kirby: Could we have a definition of "other outside interest"? There is a title on Exhibit 14 that says "includes other outside interest gas." I don't believe that has been defined.

The Witness: That includes the royalty gas plus a very small fraction of a percentage of a minority interest, very small. For all practical purposes, this is royalty gas.

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2028

John P. Furman

was recalled as a witness, and having been previously duly sworn, testified as follows:

Presiding Examiner: Mr. Furman, you have previously been sworn and testified in this proceeding?

The Witness: That is correct, sir.

DIRECT EXAMINATION

By MR. DEAKINS:

Q. Referring you to a document which you have before you, which has been marked "Exhibit X-6, Schedule 9 Revised," please state what that is and by whom it was prepared. A. That is a revision of Schedule 9 which was included in my original exhibit. It was prepared under my supervision and direction.

Q. Mrs. Suchow pointed out an error in that exhibit at the earlier phase of this proceeding, did she not? A. That is right.

Q. You corrected it, I understand, took that error out, removed that error. Does the omission of those three items to which you referred affect your testimony? A.

Several changes are required in my answer to his questions on page 1845 of the transcript.

Q. State what those are. A. At lines 7 and 8, I stated that the schedule showed

2029

20 instances in which certificates have been issued to producers at initial base prices of 21.5 cents. The number 20 should be changed to 18, and in line 9, 28 should be changed to 26.

Q. That is the number 28 should be changed to 26? A. Correct. At lines 18 through 21, I stated that the schedule showed 50 instances in which the average base price is 23 cents or more, and 31 instances in which the average base price is 25 cents or more. The number 50 should be changed to 47, on lines 18 and 23. The number 31 should be changed to 28 on line 19.

Q. On page 1846 of the transcript you answered several questions concerning the volumes shown in Column (i) of Schedule 9. What changes should be made in the volumes you gave there? A. On line 18, 441,637 Mcf should be changed to 423,031 MMcf.

On line 22, 362,500 MMcf should be changed to 343,873 MMcf. The answer beginning at line 4 on page 1847 should read, "on that assumption the reserves represented by such permanently certificated sales would be 6,877,000 MMcf, or just under 7 trillion cubic feet.

Mr. Deakins: Mr. Examiner, I now offer Exhibit X-6 and Schedule 9 thereof as revised, and tender this witness for cross examination.

2030

Presiding Examiner: Off the record.

(Discussion off the record.)

(2030)

Presiding Examiner: On the record.

Mr. Deakins: Mr. Examiner, in connection with that offer, I should like to withdraw Schedule 9 of Exhibit X-6 as originally tendered and offer in its place Revised Schedule 9 of Exhibit X-6 to which this testimony this morning has referred.

Presiding Examiner: Exhibit No. X-6 was previously offered on October 23 and the offer was then taken under advisement pending cross examination. Texas Eastern may now withdraw its Schedule No. 9 to that exhibit and substitute in lieu thereof a revised Schedule 9. The reservation on the admissibility will stand until completion of cross examination of this witness.

• • • • • • • • •

2124

Monday, December 4, 1961.

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2131

John P. Jacobs

recalled as a witness and, having been previously sworn, was examined and testified as follows:

CROSS EXAMINATION

By MR. LEWNES:

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A. Yes. The Management Agreement which is marked Exhibit X-19 sets forth the entire transaction by which Texas Eastern contracted with Continental to act as operator of the wells at Rayne Field.

• • • • • • • • •

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Q. Could you elaborate as to what is the full consideration upon which this Operating Agreement was negotiated? A. First, the consideration to Texas Eastern was this: We were purchasing a property which represented an important adjunct to our gas supply. The wells from which gas is produced from this property are deep, and the reservoirs in this property are under high pressure. We thought it would be in the public interest to retain as Operator of these wells the one organization in the world that knew the most about them.

That was the Continental Oil Company which had supervised the drilling and completion of all the Rayne Field Wells.

Consequently, we entered into the Management Agreement.

Now, in return for Continental's operating these wells for Texas Eastern, Continental receives a consideration which is paid monthly which roughly amounts to two items: One, a reimbursement for all direct expenses; secondly, a payment for what might be considered overhead and general expense.

Now, the overhead item breaks down roughly into three items: First, $75 per well per month for each well that is

2135

producing; secondly, $500 per month for any well that is drilling; thirdly, a management fee of $4000 per month.

Now, the $4000 item is termed, and properly so, in the management agreement as a management fee. If you had to do any further explanation of its nature, it is a compensation to Continental for its expertise that it has developed in discovering and drilling the wells in this field.

(2135)

You might also say that it is an item that covers an allocable share of Continental's main office expense, the main office time that is spent in directing the operation of the Rayne Field Wells.

Q. Then would you say that exclusive of the $4000, Continental will operate Rayne Field for Texas Eastern at cost? A. I would agree that the consideration to Continental in this Management Agreement certainly approximates its actual expenditures in the operation of the field.

Q. Has this $4000 monthly payment to Continental been included in any of your costs on Exhibit X-5? A. Yes. The $4000 per month item is included in the figures set forth on page 8 of Exhibit X-5 on which page are set forth the estimated well operating and maintenance expenses for Rayne Field for the future life of the field.

Now, as I testified, those figures are developed from Texas Eastern's own experience between July 27, 1959 and

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July 1, 1961.

Now, by Texas Eastern's own experience, I mean that we took from our own books the figures representing the amounts that had been paid to Continental under the Management Agreement. We took from our own books any other expenses that were associated with Rayne Field. And we averaged those over the period of time and rounded it off to the $1500 per month per well completion figure that is represented by page 8 of Exhibit X-5.

Q. In other words, these were the costs incurred by Continental for operating Rayne Field which it submitted to Texas as Eastern upon which Texas Eastern reimbursed them, and then you took these as a basis for determining what your future costs would be? A. The costs shown—or the cost that served as a basis of the figures set out on page 8 did include all of the payments

that Texas Eastern had made to Continental under the Management Agreement plus some other expenses.

And those payments to Continental did include the $4000 per month item.

Q. Now, Mr. Jacobs, this may sound elemental. But I should like to start at the wellhead and follow the physical course of the gas. Let's start with the first step.

Am I correct that once the gas leaves the wellhead, the first stop is at the separators; is that correct?

2137

A. That is correct. If you would like, Mr. Lewnes, I could put on the record the description you have asked for.

When I get through if you have some questions about things I haven't made plain, I will answer those.

Q. What I would like to do is have you proceed, and if I may interrupt you at certain stages and ask you to clarify each particular stage? A. Certainly.

The gas moves from the reservoir to the wellhead in the wells which are operated by Continental under the Management Agreement. The gas is turned over to Texas Eastern at the first control point which is at the wellhead and moves in an individual line for each of the wells to a central separator station which is located at a central point in the field adjacent to the LaGloria Processing Plant.

At this central separation station, the gas from the wells or from each well first goes through an ordinary mechanical separator which at the present time operates at about 3000 pounds. Liquid is taken from the bottom of the separator—and we will come back in a minute and pick up that 3000 pound liquid stream—the gas of the individual separators is metered off the separator. The gas off of the several individual separators is then comingled and put through low temperature separators which are operated just ahead of the

gas processing plant.

Now, these low temperature separators which operate at pressures in the order of magnitude of, oh, 1,050 pounds also have a liquid stream taken off the bottom of them. The liquid off of the 3000 pound separators and the liquid off of the low temperature separators is mixed together. And that stream is the stream that we call separator liquids.

Q. Mr. Jacobs, did you state that the gas is metered before it goes into the 3000 pound separator individually? A. No. It is metered as it comes out of the individual 3000 pound separators before it is comingled.

Q. All right. Now, could you state the physical disposition of this liquid? A. The liquid from the 3000 pound separators and the low temperature separators is comingled. And the comingled liquid is fed to a stabilizer tower which is a part of our natural gasoline plant operation.

Q. When you say "our", are you referring to Texas Eastern or Louisiana Gas? A. Excuse me. By "our" I was thinking of the whole Rayne Field Operating set-up. I meant the LaGloria processing plant at Rayne Field. The stabilizer tower is actually a part of the processing plant.

In the stabilizer tower, the lighter ends, propane,

butane gasoline which would normally be lost off of storage tanks is separated from the separator liquids and fed into the gasoline plant operation. The separator liquids off of the stabilizer tower which operates at a pressure of about 150 pounds go to tankage.

Q. How is that disposed of? A. The separator liquids in tankage are, of course, owned by Texas Eastern. The

separator liquids are sold in the tanks under long-term contracts in two principals groups. One part of the separator liquids is sold to Continental Oil Company, again under a long-term contract. Continental moves the separator liquids by pipeline to its Lake Charles Refinery for its operation theres.

Q. Excuse me. At this point: is there an existing long-term contract with Continental for the sale of these liquids? A. There is an existing long-term contract between Texas Eastern and Continental for the sale of these separator liquids.

Now, the other part of the separator liquids in the tanks —and this is roughly a 50-50 split—is sold to Sun Oil Company and others under a long-term contract and is moved by pipeline to an upgrading plant in Acadia Parish, Louisiana which is operated by an organization called "Acadia Corporation."

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Now, if I might interject one thing, Mr. Lewnes, before your next question. The stabilization of condensate at Rayne Field is a definite conservation device which was possible because we bought the whole field. Approximately 1 percent—and this is a very rough figure—but approximately 1 percent of the Rayne Field gas would be lost out of tankage if we didn't have the stabilization.

Now, by means of the stabilization this 1 percent of the gas is conserved and ends up in our pipeline.

I might further add that that 1 percent factor hasn't exactly been taken into account in all the calculations that we have presented here. It is a plus factor insofar as our volumes of residue gas are concerned.

Q. What is the contract price that you have with Continental and that you have with Sun Oil for the sale of the tank liquids which you have stated are Texas East-

ern's property? A. The contract price set forth in those contracts in effect is the day-to-day posted price either at Rayne Field or in the area.

Q. You mentioned that these are long-term contracts. When do the contracts terminate? Do you have that date? A. These contracts will terminate at the time the production payments retained by Continental and others under the assignment and conveyance terminate.

2141

Q. To whom will Texas Eastern then sell the tank liquids, assuming there are tank liquids after production payments, to whom would Texas Eastern sell those? A. We will have at that time a wide range of choices, Mr. Lewnes. Actually with the pipelines in existence I should think that our buyers that would offer the most, if you will, would be the people that are presently buying the liquids.

We are fortunate that Rayne Field is located in an area that is served by pipelines that gather high gravity products in the field. And there are many other buyers in the area.

For example, Gulf, Humble, and Texaco have maintained posted prices for Rayne Field Condensate—strike the word "condensate"—Rayne Field separator liquids, since the beginning of Rayne Field.

Q. At this point you have mentioned these tank liquids are Texas Eastern's property. Am I correct in assuming that Texas Eastern is not paying anything for these liquids other than as is reflected in the note payment?

In other words, there isn't anything over and above the note payments that Texas Eastern now must pay for these liquids? A. There is nothing over and above the cash downpayment, the note payments, that Texas Eastern must pay

2142

for these liquids.

Q. You referred to LaGloria. Could you elaborate a little as to what LaGloria is and who it is owned by? A. LaGloria Oil and Gas Corporation is one of the larger gas processors in the Gulf Coast area, and also one of the older of the Gulf Coast area gas processors. I believe —and this is subject to correction—but I believe that all of the stock of LaGloria Oil and Gas Corporation is owned by Texas Eastern Transmission Corporation.

Q. Do you know what the capacity of the LaGloria Plant is? A. Yes. In the design of the plant, we contracted that LaGloria would install a plant with an absorber capacity of 176 million cubic feet per day maximum.

Actually, as our record shows here, we have processed as much as 182 million cubic feet per day of residue gas; and we really don't know just exactly what the plant actually would pass.

Q. All right. Now, let's assume that the Texas Eastern has now sold the liquids to Continental and Sun Oil. How does it dispose of the revenues? A. From the fund of money that Texas Eastern gets from the sale of the separator liquids, Texas Eastern deducts all the expenses of operating the field in accordance with the provisions of the assignment and conveyance.

2143

Now, generally any out-of-pocket payment that Texas Eastern makes is reimbursible. All expenses under the management agreement are reimbursible. Texas Eastern's expenses in connection with operating and maintaining the gathering lines in the separator or station are reimbursible. Delay rentals or shut-in rentals, things like

payments of that type that are due under the leases are reimbursible.

So, the net effect of the separator liquids production payment is that the liquids at Rayne Field bear all the operating expenses of the field.

Q. Well —— A. Excuse me, Mr. Lewnes, let me finish my statement.

Q. I am sorry. A. That is, after Texas Eastern has kept back out of the amounts received from the sale of separator liquids the field operating expenses which I have described and which are set forth in the assignment and conveyance, then the monies that are left over are paid each month in certain percentages to Continental, et al., as the retained production payment which again is described in the assignment and conveyance.

Q. You say Continental, et al. What about Dishman, Muller, Texas Gas? A. The same thing applies there. As I testified before, in connection with these smaller interests we

duplicated the deal that we had made with Continental on the basis of the reserve interest that was owned by a group like the Dishman Group.

At the same time—and this goes back to a question I think Mr. Flanningam asked a while ago—we expanded the Management Agreement to be sure that there wasn't any question about this little interest being covered by the Management Agreement.

Mr. Flanningam: I was going to ask when you spoke of the assignment and conveyance, in the context it appeared to refer to Continental. But actually there are five of them, are there not; in a sense they are identical except as to the difference in the respective interests of the several groups?

The Witness: All of the assignments and conveyances

that apply to Rayne Field are identical in form with the exception that the names of the parties are different, and the dollar considerations which may be set forth are different.

By Mr. Lewnes:

Q. Again, in other words, if I follow the mechanics of this properly, Texas Eastern will receive dollars for the sale of these liquids? Now, they will take those dollars and retain them. Continental then will submit to Texas Eastern monthly statements as to its costs, and Texas Eastern will reimburse it for its costs. Additionally Texas Eastern will then subtract from these dollars the other costs which you

2145

mentioned. And the monies that are then left are turned over to Continental and the other producer-sellers? A. I would answer your question yes, Mr. Lewnes, if you mean by Continental's costs it is right—or the dollars it has a right to be paid by Texas Eastern under the Management Agreement.

Q. Yes, precisely.

And when does this production payment terminate? A. Roughly in 1975.

Q. How was that date arrived at?

We are again assuming, are we not, that there will be liquids to be derived from this gas subsequent to that date? A. In very substantial quantities as we have shown in some of our exhibits here, yes; that is, the so-called—or that is the liquid production after the production payments terminate we think is one of the advantages to the consumer that we have built in the transaction that we have made here at Rayne Field.

Mr. Deakins: Are you talking about the natural gas consumer?

(2145)

The Witness: Yes, the Natural Gas Consumer; Texas Eastern's customers.

Mr. Lownes, it would be a very difficult thing to say why that date was set at 1975 and not some other date. For all reasonable purposes the production payments and the note

2146

payments that we have set up are coexistent; that is, the production payment will terminate at the time the last notes are paid.

2245

Tuesday, December 5, 1961.

2257

John P. Jacobs

In the year 1957, at a cost of $101,100, Continental worked over the W. Petitjean, Unit 1, No. 1 well, in order to complete the well which had previously produced from the Homeseekers C oil sand to the Klumpp D gas reservoir.

By Mr. FLANINGAM:

Q. On page 4 of your Exhibit 5 you have shown estimated tubing replacement costs, have you not? A. That is correct.

Q. Has the tubing in any of the wells in the Rayne field been replaced, Mr. Jacobs? A. Yes, there have been some tubing replacements prior to the time that Texas Eastern took over the field, in July, or all on July 27, 1959. There have not been any tubing replacements since Texas Eastern took over the field.

2304

E. A. Olson

was recalled as a witness and, having been previously duly sworn, was examined and testified further as follows:

Presiding Examiner: You previously testified, haven't you?

The Witness: Yes.

Presiding Examiner: Sit right down.

Are you going to lead off, Mr. Lewnes?

Mr. Lewnes: Yes, sir. If there is no additional direct, we will proceed with cross-examination.

CROSS-EXAMINATION

By MR. LEWNES:

2308

Q. Now, in addition to a reserve estimate which you have stated you prepared in 1957, it is a fact, is it not, that you also prepared one as of January 1, 1959—isn't that correct? A. Yes, sir.

Q. And both of those estimates, both the '57 estimate and the '59 estimate, have been submitted as evidence in these proceedings, isn't that correct? A. That is correct, yes, sir.

Q. Now, at transcript page 1811 and 1812 you state that the four additional wells drilled since 1959 have not materially changed the field.

Now, when you say have not materially changed the field, are you referring to the reserves? A. Yes, I was referring to the report made in 1959 and this report made as of 1-1-61, that these four wells had been drilled during that interval of time, and that they did not materially change the reserve picture.

(2308)

Q. Now, you go on to state in your direct that these wells have proved up additional reservoirs, is that correct? A. Yes, sir.

Q. Now, do you have your 1959 reserve estimate, which is Exhibit B-13, with you? A. I believe I do, yes.

2309

Q. How many reservoirs do you show in that exhibit? A. In the 1959 exhibit, I show five reservoirs, one of which is split up into two different segments.

Q. But it is five reservoirs? A. Yes, sir.

Q. And what is the initial gas in place as shown on that exhibit? A. The initial gas in place as shown on the 1959 exhibit is 1,218,821 MMcf.

Q. Now, in your present exhibit, which has been identified as X-2, you show 7 reservoirs, isn't that correct? A. That is correct.

Q. And what is the initial gas in place which you show on this present exhibit X-2? A. The initial gas in place on the 1961 exhibit is 1,183,517 MMcf.

Q. Now, could you explain why your initial gas in place has decreased since 1959? A. Well, for one reason because of the drilling of these additional wells, it changed the interpretation somewhat of the fault picture of the field and as a result some of the reservoirs became a slight bit smaller, whereas these other two new reservoirs were included in this exhibit and they were not included in the 1959 exhibit.

Q. So what you are stating in effect, is, are you not,

2310

that the additional drilling has resulted in a decrease of gas reserves—isn't that correct? A. There was a small decrease, if you compare these two figures, yes, sir.

Q. Will you look at transcript page 1898, to the testimony of Mr. Jacobs.

Now, at the top of that page, Mr. Jacobs states, "While it is, of course, not exact as to what will be the future history of the field, there is also the definite possibility of future discoveries and production history which increases the gas reserves and at the same time decrease the net cost per Mcf of gas produced from Rayne field."

The present history of the development of this field has proved to the contrary of what Mr. Jacobs has stated, hasn't it? A. Only to a certain degree. As to these two figures which you asked me to read, the possibility of additional sands that have not been tested in this field are still very good, and as a result it is quite possible that reserves of this field will be larger than we are showing at the present time, as of 1-1-61.

Q. Now, is it not a fact that the north segment of the Nodasaria A sand as shown on your exhibits in 1959 and 1961 reflects a decrease of reserves in the nature of 100 billion cubic feet?

A. That is correct.

Q. Would you say that this is approximately a reduction of 10 percent of the original reserves in place for this field? A. I haven't exactly figured out what the difference between the two figures which you asked me to give in place is. If you say 10 percent, I will take that subject to check.

Q. Now, what has caused such a large reduction for one particular segment, the north segment of the Nodasaria sand? A. That was entirely due to a fault. If you will refer to the last map in Exhibit X-2 and also the last map in the 1959 exhibit.

Let us first take the 1959 exhibit. You will notice the line just below the well that is called Continental Castille

et al No. 1. There is a solid line going in more or less generally east-west direction, which signifies one of the major faults in the area.

That same fault now: Due to the additional drilling that has come in since 1959, it was now determined that that fault went more in a northwest-southeast direction than the east-west direction that I show in 1959. That is one of the differences that we discovered on the fault interpretation for this field due to the additional drilling.

2312

There is another fault. The topmost solid line in my 1959 exhibit is another major fault in the field. And due to the additional drilling between 59 and 61, that fault was found to be further south than we had shown it in our 1959 exhibit.

Now, the combination of these two changes in fault interpretation, due to the additional drilling, reduced the size of the north segment of the Nodasaria A sand.

Q. And you attribute this change or this re-evaluation of where the fault lines were as the only reason why the Nodasaria reserves in the north segment have been reduced? A. That is correct.

And then you will notice also that as a result of the Nodasaria A north segment becoming smaller, the Nodasaria A south segment became larger because of the difference, in the change of the fault interpretation.

Q. But the other segment which you say became larger did not become larger in the same proportion as the north segment A became smaller, isn't that correct? A. No, it did not become the same proportion, that is correct.

Q. Now, regarding the fault lines which you showed in your 1959 exhibit, how many control points, and what were they, in regards to both faults? A. If I can remember correctly, we had possibly only

2313

one or two control points on the northmost fault, and at the drilling of the Navarro 1-A well—after the drilling of the Navarro A-1 well ——

Q. Excuse me. Is that indicated on your 1959 exhibit? A. No, sir, it is not.

After the drilling of the Navarro A-1 well, this fault was able to be tied down in a much better fashion than we were able to tie it down in 1959.

Q. Well, what controls did you have in 1959 when you first indicated where the fault line was in your 1959 exhibit? A. I believe the only control we had for that fault was in the Touchet No. 1 well.

Q. Is that indicated? A. Touchet No. 1 well is the northernmost well on the map.

Q. While we are identifying wells, can you tell me whether or not that Continental Castille, and then it is ETUX, well — is that a dry hole? A. That well in that particular location was never drilled.

Q. Now, Mr. Olson, don't you consider a reduction of 100 billion in reserves in the Rayne field a material change?

2314

The Witness: If you compare your two figures that you asked me to read out, of the in place gas, at 1 million 2 in one case and 1 million 183 in another case, I would say there was no real material change.

By Mr. Lewnes:

Q. Well, the 1 million 183 that you referred to includes two additional reservoirs, does it not? A. Well, what difference does that have to do in the material change.

Q. Well, we are talking about a decrease in the Nodasaria, of 100 billion cubic feet between 1959, your estimate in 1959 and 1961 and I merely ask whether that is

2315

or is not a material change of reserves for one particular segment in the Rayne field. A. I believe if you add up the entire reservoir, there is probably only about 80 billion, instead of this 100 billion you are talking about.

2316

Q. Well, irrespective of whether we use 80 billion—for the moment, let's use 80 billion. Is 80 billion a material change? A. Yes, I would say it is.

Q. Now, at transcript page 1455—that was your testimony in connection with what we refer to as the 1959 hearing. A. Yes.

Q. Do they have it?

Mr. Head: We don't have it.

By Mr. Lewnes:

Q. You stated in response to a question —— A. I thought I had it, but I don't find it.

Q. ——in response to a question——this was a question that was put to you.

The question: "So that there is a possibility here that there might be a substantially greater reserve in this field than you have told us about.

"Answer: Yes, there are several sands present here now that I actually think there is gas present in them, but they have never been proved up by test."

Right here. A. Yes.

Q. Now, from your testimony up to this point in regards to your present exhibits as they relate to your 1959 exhibits,

2317

again isn't it a fact that additional drilling has actually decreased the reserves?

Mr. Deakins: You mean in total reserves or reserves in the sand, or what are you referring to?

Mr. Lewnes: Total reserves.

The Witness: In some cases it has, and in some cases it hasn't.

By Mr. Lewnes:

Q. Well, we are talking about the overall reserves of Rayne field, the total reserves of Rayne field. A. Well, referring again back to this in place gas figure which I gave in both cases, I would have to say yes, it has reduced it somewhat.

Q. Now, at transcript page 1814, you have stated that you used the volumetric method in estimating the reserves shown in Exhibit X-2. Now, are there other methods of estimating reserves other than the volumetric method? A. Yes, there are.

Q. Could you just indicate the names under which they go? A. Well, you can estimate gas reserves depending upon the amount of history you have and the amount of production that has come out of the wells. You might want to estimate them on the pressure cumulative method.

Q. They are the only methods that you mentioned?

2318

Are there any others that you may know of? A. Those, the volumetric and pressure cumulative methods, are the two methods that are used most often.

Q. Since this field has produced for several years, could you have used this pressure cumulative—I presume that is the same as pressure decline. Could you have used that method? A. I did not choose to use that method.

for the preparing of this exhibit mainly because even though the field has been produced for several years there has been approximately only 7½ percent production of the entire field thus far, according to my reserves. And with only that amount of production history behind a field of this size it would be more appropriate and more reasonable to use the volumetric method than to attempt to put much faith in the pressure decline method as you spoke of.

Q. Pressure decline is the same as the pressure cumulative method? A. Yes.

Q. Now, at transcript page 1815, I believe you have made the assumption that the Rayne field will be depleted through pressure depletion. Now, would you elaborate on the use of the term "pressure depletion"? A. Due to the abnormal pressures which we have present here in this field, we feel through the experience that we

have had that a field of this nature will be depleted by the pressure actually decreasing and not, say, by water encroaching and be flooded out by water drive.

Q. Is water drive the only other method of type of depletion? That is, you have either water drive or pressure depletion? There is no other form? A. No.

Q. Now, will you please turn to your maps in Exhibit X-2. Turn to the first one, if you will.

Will you please indicate and explain the various symbols and lines as they appear on there? A. Well, to start with, the heavy shaded end line that encompasses most of the page is the area that has been dedicated or conveyed to Texas Eastern in this particular purchase. The various dashed lines and solid lines and dash and dot lines represent the productive limits of the various reservoirs

that I show on the map. In this particular case we show four different reservoirs on this particular map.

The light solid lines are lease lines.

You want to get into symbols, too?

Q. Yes, please. A. The various symbols that show the round circle with the marks around the circle are noted as gas wells. There is one well in the approximate center of the field that

2320

you will notice is completely just a heavy dot, called the Continental Mouton No. 2. It designates an oil well.

Q. Mr. Olson, which reservoir is that oil well in? A. I believe it is in the reservoir called Homeseekers C sand.

Now, there is a mistake here on this map where we show a filled-in heavy line, also with hash marks on it, known as the Continental Petitjean No. 1. And that should not have been colored in dark. It should have been —it should look exactly like the other gas symbols that we show on the other wells.

I believe that is all, other than the bayou that is shown there on the map in the northwest part of the field.

Q. And your explanation of the symbols and lines as they appear on your first map are equally applicable to the symbols appearing on your second map; is that correct? A. That is correct.

I should further add that I did not bring out the fault limitations. In other words, the productive limit line of the reservoir could not only—could be a combination of either a shale outline, a fault line, or actually a gas-water contact line.

Presiding Examiner: Let me ask you, on this second map.

The Witness: Yes, sir.

2321

Presiding Examiner: Continental Petitjean No. 1, that you described the symbol on the first map as being a gas producer.

The Witness: Yes.

Presiding Examiner: You said the inside of the circle should not have been shaded out?

Then over the second map you show that same hole as an oil well.

The Witness: That is right, sir. It used to be an oil well, but is no longer an oil well.

Mr. Flaningam: May I ask a clarifying question?

Mr. Lewnes: Yes, sir.

By Mr. Flaningam:

Q. You have referred to symbols for gas wells, circles with hash marks. I notice that some have eight hash marks and some have four. Yould you indicate the difference? A. I believe we will have to talk to the draftsman about that. That is just something that he either failed—there is no particular specified number of hash marks that you have to have signifying a gas well. Some people would use eight and some may use six. It just depends on what the draftsman wants to use in a particular way.

Q. Well, take the first map in the upper lefthand portion. You have an item designated "Sun, NOD," and then "UN-10." Does that indicate a dry hole?

2322

A. That is a dry hole symbol. That only has four hash marks, that is correct.

Q. What was the point I was making. A. In other

words, we always put in more hash marks than four on a gas well, but it could vary.

Q. That is it.

By Mr. Lewnes:

Q. Mr. Olson, have you included on your maps 1 and 2 all the existing wells on the Rayne field, properties conveyed to Texas Eastern? A. I believe that there are one or two cases where there are one or two additional wells that are not present on one of the maps that are present on the other. That was an oversight on our part, except where those cases exist where we say we would not have two more wells on one map and would have it on the map, and it is mainly because the reservoirs we show on that map are the only ones they are productive in and they would not be productive on the other reservoirs on the other map.

Q. In response to an inquiry by the Examiner, you stated that Continental Petitjean well on your map No. 2 had been an oil well. Could you state from what reservoir that had produced oil? A. I believe that was in the same reservoir that the other oil well that I had mentioned was in.

2323

Q. That is Homeseekers C Sand? A. Yes.

Q. Will you refer to Exhibit X-21, please, the last page.

Mr. Deakins: I don't think he has that.

The Witness: Yes, sir; I have that.

Mr. Deakins: Do you?

The Witness: I believe so.

By Mr. Lewnes:

Q. Specific reference is made to an item which appears as footnotes 2 and 3. Now, footnote 2 says "Produced

Nodasaria sand from May, 1955, through October, 1956." And that I think refers to the Petitjean No. 1. Could you state why that ceased to produce? A. I believe it refers to the Arceneaux No. 1.

Q. If you say so. A. Would you read that? I didn't quite remember what the question was, again.

Presiding Examiner: Read the question, Mr. Reporter.

(Question read.)

The Witness: It did not exactly cease to produce. Generally speaking, the well was still capable of producing in the Nodasaria sand. However, it was deemed advisable by the operator to work that well over from the Nodasaria to the Klumpp reservoir.

2324

Q. Well, did that well first begin to produce in 1955, in May, 1955? Is that when production commenced from that well? A. If it says here on this sheet, I presume so; yes, sir.

Q. In other words, there was a workover somewhat within a one-year period. Now, do you know what the workover consisted of? A. Well, the workover consisted of changing this well from the Nodasaria sand into the Klumpp reservoir.

Q. What was the reason for that, do you know? A. I would imagine the reason for that would be as these wells were drilled in the field the operator found that he had more wells than he needed in the Nodasaria sand and did not have a balance of wells producing from other reservoirs, and also due to the unitizing or making the various sand units that the State forced or asked the operator to make. All these reasons combined were used, and that was the reason for changing some of the wells from one reservoir to another.

Q. Now, could you give, without my asking the specific questions, give a similar explanation as to footnote 3, which reads, "Produced from the Nodasaria sand from November, 1954, through March, 1955." A. The same reason would apply to that particular well

2325

as I have given for the footnote No. 2 well.

Q. And, finally, getting down to footnote No. 9, which states "This well produced from the Homeseekers C sand from December, 1953, through November, 1957"—could you give us the same explanation for that? A. That well was originally an oil well in the Homeseekers C Sand, and it depleted out of that sand, and after its depletion it was worked over then into the Klumpp gas reservoir.

Q. Am I correct that you have not indicated any dry holes on your maps 1 and 2? A. I believe Mr. Flaningam brought out the dry hole that I failed to mention, in the northwest part of the field known as the Sun Nodasaria unit 10.

Q. Was that or is that the only dry hole drilled on the Rayne field properties, being conveyed to Texas Eastern? A. That is correct.

Q. Are any of the productive limit lines shown on your maps 1 and 2 also the gas-water contact lines? A. Yes, sir; I stated that it was a combination of gas-water contact lines and fault trace or shale outline.

Q. Could you state which reservoirs have a gas-water contact? A. Yes, sir. Gas-water contacts are found in the Nodasaria reservoir, the Homeseekers E reservoir, the Home-

2326

seekers D-2, and the Klumpp D reservoir.

Q. Now, are all—is there a gas-water contact for every well in every one of these reservoirs which you have indi-

cated has a gas-water contact? A. May I have that read back, please?

Presiding Examiner: Yes, will you read the question, Mr. Reporter.

(Question read.)

The Witness: No, sir.

By Mr. Lewnes:

Q. Mr. Olson, in the preparation of your estimates going back from the 1957 estimate all the way up through your present estimate, could you state where you obtained the information upon which these estimates are based; that is, the backup data for them? A. The information was—in the early 1957 estimate part of the information was obtained from the Continental Oil Company. Part of the information from Texas Eastern, and part of the information which we have in our own files. This estimate as of 1/1/61, the information was obtained from Texas Eastern and from our own files.

Q. Well, did you obtain any information from the Louisiana Conservation Commission? A. We used some information from that source; yes, sir.

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Q. And, to the best of your knowledge, has all the information that you used to make your reserve estimate —has that been made available to the Staff of this Commission? A. To the best of my knowledge, everything that I used in preparing my estimate has been made available to the Staff.

Q. Now, some of this information that you made available to the Staff was logs. Could you state the purposes for the running of logs. A. Well, in order for you to know you have anything under the ground at all you have to

have an electric log to indicate whether you have any productive reservoirs. It also is used to determine the depth of the reservoir. It is used to obtain net pay of the particular sand you are interested in. It is used to obtain gas-water contacts if present. And can be used for several other things that I just can't think of at the moment.

Q. Can you tell from an electric log whether a reservoir is productive? A. No, you can't.

Q. When you referred to electric logs, did this encompass the different types of electric logs, that is, a microlog, etc.? A. I don't quite get the question.

Presiding Examiner: Will you read the question back,

please?

Mr. Deakins: Read that back.

(Question read.)

The Witness: I was referring mainly to just the plain electric log at that time.

Mr. Lewnes: Right.

By Mr. Lewnes:

Q. Now, there is such a log as a microlog, is there not? A. Yes, sir.

Q. And what is the purpose of a microlog? A. The main purpose of the microlog is to determine the porous sections of the particular sand or reservoir.

Q. Now, what is the purpose of taking cores, conventional cores? A. Cores are normally taken in order to determine the porosity of the formation, and also the permeability.

Q. Isn't it also a fact that you take cores to determine whether you have gas or oil? A. Yes, that is true. You analyze the core to determine whether it is oil saturated or whether it is saturated with gas. You also use a

core in the laboratory to determine interstitial water percentages.

Q. Can you tell whether you have gas or oil by merely looking at a log, an electric log?

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A. You can normally tell by the resistive part of the log whether some form of hydrocarbons are present, yes. Actually, there is only one method to tell whether there is definitely gas or definitely oil, and that is to perforate it and see what happens.

Q. Now, you have included the Homeseekers D-4 sand in your overall reserve estimate, have you not? A. Yes, sir.

Q. And you have stated that that Homeseekers D-4 sand has not been tested; isn't that correct? A. That is true.

Q. Now, why did you include the Homeseekers D-4 sand if it had not been tested? A. Well, we firmly believe that if a sand closely resembles, that is, if the electric log characteristics of a certain sand that, say, has not been tested but closely resembles the electric log characteristics of a sand that has been tested in the same, say, range and depth, that the possibility is very good that that sand also has hydrocarbons present in it.

Q. In other words, you have taken the logs run in the Homeseekers D-4 sand and compared them with logs run in one of your other sands and have concluded that in all probability there is gas in there? A. That is correct, yes.

2330

Q. But from the log alone, you cannot tell whether there is gas or oil there, isn't that correct?

Mr. Deakins: That is objected to as repetitious.

Presiding Examiner: Oh, I understood the witness to say the only way you can be sure is to drop a bit into it.

The Witness: The only conclusion you can make is that in a field of this nature where the majority of the sands, except for one very small little oil reservoir present—that all the rest of the sands have been gas-bearing, and we have to draw our conclusion that this sand also if it is going to follow the same trend will be gas-bearing.

By Mr. Lewnes:

Q. But you have not taken any cores from this reservoir, any cores from the Homeseekers D-4 sand, isn't that correct? A. I do not believe; no, sir.

Q. Well, could you check that and state definitely whether you have or you have not? A. I don't——

Q. I believe you will find that on one of your work papers, which is titled "Basic Data for Reservoir Evaluation," about the fourth sheet—— A. No, there were no cores taken that we used to make any estimates.

Q. And the reserves in the Homeseekers D-4 sand have been included in Mr. Marshall's availability study?

A. Yes, sir; they have.

Q. Now, will you refer to page 1 of your Exhibit X-2, specifically to lines 16 and 18, where you indicate that you expect to recover about 93 percent of the initial gas in place.

Is this a normal recovery factor for gas fields in southern Louisiana? A. In our opinion, this is the recovery that we expect from this particular field.

Q. Well, in relation to recovery factors of other fields in southern Louisiana, is this high, low, or approximately the same?

Mr. Deakins: I object to that, Mr. Examiner, because the statement is improper. It doesn't take into consideration the many different fields and different formations.

If it had the word "similar" I wouldn't have any objection. This is just all encompassing. This man is a lay witness. It may be an oil field that is on pumps now.

Mr. Lewnes: Well, let me ask the question this way, Your Honor.

By Mr. Lewnes:

Q. Mr. Olson, do you know of any field, similar field, of similar sands and similar depths, that have a recovery —that have gotten a recovery factor of 93 percent of the gas in place?

A. Are you referring to something that I have made an estimate to or are you referring to something that somebody else has made an estimate to?

Q. Actual recovery. A. I do not believe we have any major fields of this size in south Louisiana that have been completely depleted to say definitely that 93 percent of the gas has been produced.

Q. Do you have any smaller fields of the same type of sands, at the same depths, that have had a recovery factor of 93 percent? Do you know of any? A. I don't know of any smaller fields particularly, no. I do know of some wells that are located in some of our good gas fields in Louisiana that will certainly approach this or have approached it already.

Q. Well, in your 16 years, I believe you stated, in your expertise of 16 years in the field of geology has it been your experience that you have recovered as high as 93 percent of the initial gas in place in any field anywhere in the United States that has similar sands at similar depths as the Rayne field? A. As I have stated, I firmly believe that the recovery that I have used on this Rayne field is a reasonable recovery, and is a recovery that can be expected in this particular case.

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Mr. Lewnes: Mr. Examiner, I submit that the witness has not answered the question put to him.

Presiding Examiner: Will you read the question, Mr. Reporter.

(Question read.)

Mr. Deakins: When you use the words "you have recovered," you mean that you know——

Mr. Lewnes: That you know.

Presiding Examiner: There has been, I think he meant to say.

Mr. Deakins: Yes.

The Witness: I am sorry, I didn't quite understand the question before.

I don't know of all the areas in the entire United States, and can't state. There probably has been some in some areas that I would not know about. In this particular area that we are talking about there has not been sufficient amounts of gas produced from any one field that I know of to the depletion phase of that field where I can state that this percentage of gas has come out of the field.

By Mr. Lewnes:

Q. In other words, what you are stating in effect is, is it not, that you don't know of any similar type of field in any place in the United States that has recovered 93 percent of the initial gas in place?

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Mr. Deakins: I object to that question——

The Witness: No.

Mr. Deakins: —because the witness has already answered—the counsel has changed the question on him. He

answered that wells had. And counsel now puts it on a whole field.

Presiding Examiner: As I understand ——

Mr. Deakins: He said none had been depleted.

Excuse me, Mr. Examiner.

Presiding Examiner: What I understood the witness to say, that the comparable field he knew about had not been sufficiently depleted as of this date, so he could tell how much the percentage of recovery would be.

Mr. Lewnes: Well, that is precisely the follow-up question.

By Mr. Lewnes:

Q. In other words, he does not know to this date of any field that has recovered as high as 93 percent of the initial gas in place. I ask if that is a correct statement. A. And I will repeat to say that in the areas that I know of; correct.

Q. Now, what methods are used to determine the porosity of gas-bearing reservoirs? A. There are a number of methods used to determine porosity. Are you referring to laboratory methods?

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Q. Well, I am referring to any methods that—well, we will say any methods that you have used in connection with making reserve estimates. What methods do you normally use in making reserve estimates, that is, to arrive at the porosity of the gas-bearing reservoirs? A. Well, I normally use, if available, the laboratory analyses that have been made of the various cores to determine the porosity, using all the available core data that would be furnished me on a certain reservoir I would definitely check that data, and if it appeared that it was reasonable data, and that the lab technique had been done in such a

way that would give it a reasonable porosity or give it a true porosity of what that sand had, then naturally I would use all of that available core data in arriving at my average porosity for the entire reservoir.

Q. What other methods might you use, other than core analyses? A. If I had no core analyses available I would have to make the best reasonable estimate that I would know at that time that could possibly be used as the porosity for that particular reservoir. I would use the fields in the area that had porosity taken at similar depths, that closely resembled this particular field that I did not have any information of.

Also you could use the electric log and microlog,

determining porosity, if you deemed it so advisable.

Q. Would you say that the core analyses that you have used, and as shown on the work papers supplied to the Staff, were adequately tested in the laboratories? A. Yes, I would say so.

Q. Now, here, again, if you did not have any core analyses would you revert to a quantitative analysis of electric logs? A. Not necessarily.

Q. Well, if you had no core analyses, then, would it be purely judgment? A. That is correct. I would feel that my judgment in the area would probably be more correct than using the electric log.

Q. In other words, am I correct that you do not think a quantitative analysis of electric logs for determining porosity is a proper means to determine porosity? A. I did not say it was not a proper means. It depends on the individual and depends on his experience in the area.

Q. Well, you would never use a quantitative analysis

of electric logs if you did not have core analyses? A. No, I did not say I would not actually never use one.

Q. Well, what I am trying to understand is when would

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you use them and when would you not use them, assuming that you do not have core analysis? A. It is difficult for me to state in a general way of specifying that in one case I would use it and in one case I wouldn't use it. There are a lot of factors that would depend on it, and I couldn't say definitely that just because I didn't have any core analyses that I would definitely use the quantitative analysis.

Q. In other words, depending on the specific situation you might feel a quantitative analysis of logs might be a good basis for determining porosity, yet under another given situation you might determine that it was not? A. That is correct.

Q. Now, how did you determine the porosity for the Rayne field reservoirs? A. They were determined by a great amount of core data that was available for this particular field.

Q. For which reservoir was the core data available that you used to determine porosity? A. Most of the cores were taken in the reservoirs that had the greatest amount of gas, an dthose were the Klumpp D, Homeseekers E, and the Nodasaria A.

Mr. Deakins: Did you say most of them were, or is that limited?

The Witness: Most of the core samples that were taken in

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the field were taken in the reservoirs that had the majority, that is, that represented the majority of the gas.

By Mr. Lewnes:

Q. Now, am I correct, then, that all the cores that you had, and the data relating to those cores which have been submitted to the Staff, relate solely to the Klumpp D, the Homeseekers E, and the Nodasaria E? Is that right? A. There may have been some scattered core analyses in some of the other reservoirs that I felt there weren't a sufficient number of samples taken to be representative for that particular porosity in that reservoir.

Q. Well, then, what did you use as a basis for determining the porosity for these reservoirs where you had no core analyses or you had core analyses which you thought were not adequately representative? A. Well, I attempted to correlate as closely as possible the porosities that were available in the various ranges of depths in this reservoir, and then used my judgment in the numbers of years I worked in this area and tried to use in my best judgment of the best estimate that I could come up with for that porosity in reservoirs where I did not have core data available.

Q. So for those other reservoirs it was in a sense purely judgment? A. More or less; yes, sir.

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Q. If you can, can you indicate why sufficient cores were not taken in the other reservoirs? A. No, I can't.

Q. And just following my previous question one step further, the judgment applied to the reservoirs which you did not have core analyses for, that judgment was based primarily on the cores from the reservoirs—rather, the cores you did have from other reservoirs in Rayne field? A. That certainly helped me in making my decision; yes, sir.

Q. Now, you have used the permeability cut-off, haven't you? A. Could you ——

Q. I will ask you —— A. Could you define for me what you mean by permeability?

Q. I was going to ask you to define it, but I preceded it with the question that you have used it and if you have used it you can define it in the manner in which you have used it. A. Yes, I generally use some approximate cut-off on permeability, as the difference between, say, a sand that would be permeable to flow gas or a sand or close—say closer to a shale that would not contain gas or have an extremely low permeability and would assume it not to be gas-

2340

bearing.

Q. Now, how does the use of this method affect your porosity results? That is, could you explain it mechanically, that is? A. Well, during the process of coring a well, they core or attempt to core the entire section or the entire productive section of the reservoir. And in so doing naturally they core some shale along with sand.

Q. Do you have your logs—— A. I haven't quite finished.

Q. Oh, I am sorry. A. So in the shale areas your permeability naturally would be very, very small, and the sand would not be productive. So, naturally, that part of the core analysis would not be used in the determination of your average porosity.

Q. Do you have your log for the Gerard Mouton No. 1? A. I do not have that log with me; no, sir.

Mr. Lewnes: Mr. Examiner, we are going to go into a rather lengthy cross-examination of this log, if you want to take a recess.

Presiding Examiner: All right, we will take the afternoon recess at this time.

(Whereupon, at 3:19 p. m., a recess was taken until 3:29 p. m. of the same day.)

Presiding Examiner: O. K., are you ready, Mr. Lewnes?

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Mr. Lewnes: Yes, sir.

By Mr. Lewnes:

Q. Mr. Olson, do you have your logs for the Gerard Mouton No. 1? A. No, I do not.

Q. Well, I hand you a copy of that log and ask you if this is not the log, a log similar to the log that you used? A. Yes, it is.

Q. Will you look through that log and state what the top of your net pay is, that is, what depth is at the top of your net pay? A. Would you clarify that question, or rephrase it, as to exactly what you mean by the top of my net pay?

Q. At what depth is the top of your net pay, that is the figure, the footage? A. In which particular reservoir are you talking about?

Q. The one that is down there at about 11,200, or 11,200 feet, I am sorry. A. The top of this particular sand known as the Klumpp D Reservoir I picked at 11,198 feet.

Q. All right. And at what depth is the bottom of that same reservoir, for your net pay? A. The bottom of the sand I picked at 11,253 feet.

Q. Now, what log are we using in picking the tops and

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bottoms of your net pay? Is that an electric log or is that a microlog? A. I am using the electric log in this case, sir.

(2342)

Q. Now, how much net pay have you given for this interval? A. I picked 44 feet of net pay in this interval.

Q. So am I correct, then, in stating that within this interval you have eliminated 11 feet and have arrived at 44 feet of net pay? A. That is correct.

Q. Now, do you have the core analyses for the same well at that same particular depth, for that reservoir? A. I don't have it here.

Q. Well, I hand you a group of papers. Subject to your check, I will ask you whether these are not copies of the core analyses for some of the subject reservoirs? A. Yes, sir; this is taken from this well.

Q. Now, is it not a fact that from this core—will you strike that, from this core, and we will say: Is it not a fact that the interval you have just given has been solidly cored? A. It was cored from an interval of 11,196 to 11,245, and then some additional cores were taken from 11,255 to 261.

Q. Well ——

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A. There is an interval there, it appears to me, of 10 feet, that I don't see has been included.

Q. Well, now, the eight feet that have not been cored, that is, there has been no coring, that is down at the base of the sand, is that not correct? A. Ten feet.

Q. Ten feet. A. That is shown towards the base; yes, sir.

Q. So we have approximately 47 feet of coring? A. That is right; yes, sir.

Q. Now, what is the average porosity for this interval, and how did you determine it? A. All I can tell you is the average porosity I got for the sand, or for the reservoir. I used an average porosity for this particular reservoir of 21.8 percent.

Q. Well, I want to know what the average porosity was

for this interval, for this particular well. A. One moment, please.

The average porosity that I came out for this particular well was 21.6 percent.

Q. Now, how did you arrive at that porosity? A. That was arrived at by averaging the total of 22 samples.

Q. Well, in other words, you eliminated 25 samples? We are talking about core samples.

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A. If there happens to be 47, and I used 22, I must have eliminated 25; yes, sir.

Q. And why did you eliminate these 25 samples? A. It was done as a combination of two reasons. Judgment being one, and the fact that some of the samples indicated too low a permeability and I just considered them not representative.

Q. When you say low permeability samples, you mean they were not productive; is that correct? A. I cannot say that they are definitely not productive. It is just the judgment factor that I use where something could have happened to the sample possibly, and the permeability was not a good permeability, but also that there might be some tight streaks in this interval that indicated low permeability, and I would have considered those streaks to be non-productive.

Q. Well, isn't this a demonstration of the use of what you have referred to as your permeability cut-off? A. In some—in that respect, yes.

Q. And I believe you did testify previously that in your permeability cut-off you have cut out those—you cut out those samples which are non-productive. I believe you so testified earlier, is it not correct? A. I said that it was quite likely they would not be productive.

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Q. Now, when we referred to something that has a low permeability sample, we in effect are saying that we are talking about a sample that has a very low porosity, are we not? A. They sometimes coincide, yes.

Q. Do they happen to coincide in this particular case? A. Not in all cases. I see some permeabilities here of 9 and 7 Millidarcies, with porosities of 20.1 and 20.7 percent. Also there are cases where there are permeabilities of .2 Millidarcies, with, say, a porosity of 2.2.

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Q. Well, it is a fact, is it not, that the majority of the samples you have eliminated on this low permeability cut-off—the majority of those samples do indicate a low porosity. A. The majority do, yes, sir.

Q. If I may use the blackboard, Mr. Examiner. I shall certainly try to narrate this in such a manner that the recorder will get it.

Q. Mr. Olson, am I correct—and I draw this chart here, where this indicates a log and it shows the top of your net pay at 11,198 and the bottom of that same sand at 11,253. And you have indicated that the net pay within this sand is 44 feet, is that correct? A. Yes, sir.

Q. Now, we have stated that coring had been done between 11,196 feet and 11,245 feet, and that there had been approximately 47 samples of coring in between that distance, is that correct? A. That is correct.

Q. Now, you have eliminated, I believe you stated, or you have used only 20 of these cores within this interval, isn't that correct? A. 22?

Q. 22. A. 22, yes, sir.

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Q. So that in effect you have eliminated some of the cores in between here and have come up with an average porosity of I believe you said 21 point——A. Six.

Q. Six. A. Yes, sir.

Q. And that is with the use of only 22 cores. Yet, is it not a fact that you used this porosity and applied it to the entire 44 foot net pay? A. I used that porosity for that particular well, yes.

Q. And you applied it to the entire 44 foot of net pay? A. You can't exactly say that I applied it to the entire 44. I used it as one porosity for one well in that particular reservoir.

Q. Well——A. In this particular case I found that the representative porosity that was taken on this particular well was 21.6.

Q. In other words, for this particular well, you said you used a net pay of 44 feet and a porosity of 21.6. A. That is correct.

Q. All right.

Now, since you did eliminate some of the core samples with low permeability which were nonproductive, is it not a fact that you should then have applied this 21.6 percent

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porosity to a net pay reflecting that same elimination of these core samples? In other words, you would use the 21.6 percent porosity and relate it purely to approximately 26 feet of net pay, if you were consistent in the use of your cores as you applied it to the net pay shown on your logs. A. No, you can't look at it entirely that way. Simply because I never saw the cores or any of the cores myself, with my own eyes, that were taken out of this well. There could have been some cores that were taken out of this

well that were contaminated with drilling mud and what-not and also some cores that when they got to the laboratory were in such a fashion that they did not produce a representative sample on the laboratory analysis.

Q. Well, you previously testified that all the cores as indicated on your work papers were good core samples and that they were reliable, in essence I believe you so testified? A. In the majority of cases, yes.

Mr. Deakins: That is not what he said in reference to this, Mr. Examiner.

Mr. Lewnes: I believe the witness has indicated that he stated in effect the same as I have put it to him.

By Mr. Lewnes:

Q. Now, is it not a fact that if you used all the cores as they related to this exact 44 feet of net pay which

you have used, that you would have come up with a porosity of 17.3 percent? A. Could I ask you now how you arrived at this 17.3 percent? You added up all the cores, is that my understanding?

Q. That is correct, all of the cores as they would relate to the 44 feet net pay that you have used, and averaged them out in the same manner that you averaged them out, without the elimination of the cores in between. A. Not taking out any, but just averaging them all.

Q. Right. A. If that is the figure you came out with, I assume that that figure, or your percent would be correct there. However, that is not the way I did it, and that is just a way of whether one person would do one thing and another person would do another thing. But I don't do it in that particular manner.

Q. Mr. Olson, if you eliminate the core samples that show a low permeability which by your own definition are

non-productive, why is it that you included—you nevertheless included it in your net pay, that is include that same strata in your net pay? A. Well, as I said before, I don't know what the conditions of all these cores were.

You can't take a particular point here and say that all

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of those cores came out in the same condition, that one core came out the same way as another core did. The only thing you can do is to say that the majority were representative, and you have to use, in your best judgment, what you consider to be the ones that represent the porosity to be the best.

Q. Well, in other words, you are saying in effect that some of the cores are good and some of the cores aren't good, and in your judgment you picked out the ones that weren't good. A. In my judgment the way the laboratory has come out with their analyses, that I feel that some of them definitely have to be thrown out, whether it is due to the fact that the core was broken up too badly or contaminated or something like that or actually due to the fact that in that particular reservoir there was a shale bed that had a low porosity.

Q. Well, but these cores for this particular reservoir. Can you state that you know exactly what the laboratory conditions were under which the results have been set forth in your work papers? Could you state from those work papers whether these cores were good or were not good as far as laboratory testing was concerned? A. No, I can't, because I said I did not see the cores.

Q. In other words, how do you know which to eliminate

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and which not to eliminate depending on whether good laboratory analysis was conducted or not when you don't

know what analysis was that was conducted on these cores? A. Well, I attempted to tell you that I used this permeability barrier, I mean cut-off point for one reason of cutting out certain samples.

Q. Yes, sir——A. Now, I have to base my conclusions on something.

Petroleum engineering is not a definite science, in that you have to use a lot of judgment in how you use material. You can't point your finger at one point and say just because this is this way that is the way it is going to be, because it isn't.

Q. Well, how did you determine porosity for the Klumpp D reservoir? A. I had core analyses from three different wells in the Klumpp D reservoir, one of which was this Mouton No. 1, one was the Dupuis No. 1, and the other was W. Petitjean No. 2.

From these three wells I used a total number of samples, of 55 samples—a combination of all three wells—and weighted those out and arrived at my porosity that I used in this particular exhibit.

Q. So you used core samples for the determination of your porosity for the Klumpp D reservoir.

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A. Yes.

Q. Is that correct? A. Yes.

Q. Can we logically conclude that in all the other reservoirs as to which you made a determination of your porosity on the basis of core samples, that you used the same type of permeability cut-off? A. Generally speaking, yes, sir.

Q. Now, if you decrease net pay, all other factors remaining constant, does it not follow that you decrease the overall reserves? In other words, given a given situation with a set of given facts and a specified figure of reserves. Now, if you take those facts and leave every-

thing constant but decrease the net pay, you ultimately would then arrive at a lesser reserve figure, is that not correct? A. That is correct, yes, sir.

Q. And, again, all factors remaining constant, if you decrease porosity similarly, you get a lower reserve estimate? A. That is right, yes, sir.

Q. I refer you again to your Exhibit X-2, page 1, with specific reference to line 7 under the Klumpp E sand.

Now, your present porosity there is reflected as 24.9 percent. Yet in your 1957 reserve estimate which was submitted in these proceedings, it was 21.0 percent. Is that not

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correct? A. I do not have that exhibit here. Could I ——

Mr. Deakins: We don't have it here.

Mr. Lewnes: We have a copy of it.

Presiding Examiner: Is that Exhibit M-13?

Mr. Lewnes: Well, Your Honor, this is an exhibit from the formal filings. I don't think it is the exact exhibit that was—this is not the exact exhibit, I don't think it is the—oh, excuse me.

No, Your Honor, this is part of Exhibit X-4, which was submitted in the proceedings originally, and actually it is the exhibit that was contained in the application itself, I believe. And it is marked Texas Eastern Transmission Corporation, estimated reserves and availability of natural gas in the Rayne field. Acadia Parish, Louisiana, as of January 1, 1957, filed with this Commission April 22, 1957.

Presiding Examiner: I see, M-13 was filed in connection with the 1959 estimate.

Mr. Lewnes: That is correct, Your Honor.

The Witness: Yes, I see that.

(2353)

By Mr. Lewnes:

Q. Was I correct that you there reflect a porosity of 21.0 percent for the same Klumpp E sand, whereas you now reflect a 24.9 percent porosity? A. That is correct.

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Q. Now, could you state the reason for this change in porosity figures? A. I am not exactly sure how I arrived at this back in 1957. My memory kind of—it is a little bit vague about that time.

But I would say that one reason for using a larger porosity in this particular—in this exhibit, other than the 1957, was or could be due to several reasons. One being that we now had many more wells in the field. We had more electric logs to look at. We also had more core information available on the other reservoirs. And as a result, we decided that that porosity should be larger at this time than it was during the time that we had a lot less information.

Q. Well, isn't it a fact that you do not have any core analyses for the Klumpp E reservoir? A. That is correct.

Q. So are you saying—— A. Now, it is possible that we had some two or three or four samples taken in that particular reservoir, and if I remember correctly those samples showed from 26 to 27 percent porosity, which I deemed was too high in this particular case and did not use those samples.

Q. Did you state that you made some electric log calculations in regards to arriving at this present day porosity for the Klumpp E?

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A. No, I did not state that. I just stated that we had more electric logs—more wells drilled and more electric logs run, than just checking the characteristics of the sand on the electric log.

Q. Well, you are talking about more logs run. What data were you referring to now? Were you reffering to logs run recently, in 1960? A. Well, more wells drilled than since the report of this data in 1957. I believe there were only 8—let's see. Thirteen wells I show on this particular exhibit.

Q. Well, Mr. Olson, when did you make this reevaluation of all the information to date and then make the change of 24.9 porosity figure for the Klumpp E sand? A. We have kept abreast of these reserves ever since the first time we ever made the reserve estimate, and have brought up our estimates periodically, that is checked our estimates and brought the field up to date, or to whatever date we were working on at that time.

But we keep up with our structure and isopach maps and all other pertinent data that would keep coming in and swelling our file on information on the field.

In my 1959 report I also, I see, used the same porosity. So I assume it was back at least that far that we changed this porosit yin this particular reservoir.

Q. Is it not a fact that on your basic data sheet

contained in your work papers for this particular reservoir you have, or there is an indication "insufficient core data based on judgment"? A. That is right, yes, sir.

Q. Did you use irreducible water samples to determine your interstitial water? A. In some reservoirs, yes, sir.

Q. Could you specify which reservoirs and which wells? A. The reservoirs that I used this data on was out of the Klumpp D, the Homeseekers E, and the Nodasaria A.

Now, the wells were the Nodasaria A sand. Information pertaining to irreducible water or capillary pressure data, so to speak, was on the E. A. Arceneaux No. 1 well, the Dupuis No. 1, the Dugas No. 1, also known as the

(2356)

Nodasaria Unit No. 7, the T. Petitjean No. 1 and the W. Petitjean No. 2.

On the Homeseekers E sand, the wells that had this data were the Mouton No. 1, Arceneaux Senior No. 1, and the W. Petitjean No. 3.

And on the Klumpp D reservoir, the wells in that particular reservoir were the W. Petitjean No. 2, the Dupuis No. 1, and Mouton No. 1.

Q. Mr. Olson, would you explain the terminology or the differences in the meaning of connate water, interstitial water, and irreducible water?

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A. Connate water and interstitial water are one of the same, and irreducible water is the water in the sand grains above the transition zone of the reservoir.

Q. Well, by your meaning of the transition zone—in other words, if I were to understand this properly, you would have an irreducible water on the top, followed by a transition zone beneath it, and then we arrive at the gas water contact or the water saturation, is that correct?

A. No, that is not correct.

I could draw this on the board, but I guess——

Q. Well, it is all right with me.

Presiding Examiner: If you explain it as you go along, so we will get it on the record.

The Witness: Good.

These two lines here represent the well bore and this line here represents, say, our long normal curve line on the resistivity side.

Let us say this being the self-potential side of the log, that the total sand thickness is from here to here (indicating).

The area shown here, down to the break-off point here (indicating) would be what we would consider the area

containing the hydrocarbons, in the particular reservoir, whether it be oil or gas.

This line coming in here indicates that it is changing from hydrocarbons to water, being that we still have ample amount of sand here on this side.

2358

We would say that a point approximately here would be 100 percent water line, or from this point on down would be 100 percent water in the sand (indicating).

The line drawn across at this particular point or the inflection point of this curve coming back into the shale line, would be the approximate point of either the oil water or gas water contact of the particular sand.

The area contained in here from that line down to the 100 percent water line would be what we would call the transition zone of the sand or the part of the sand that would contain part oil and part water.

The oil percent would be a little greater up in here, and then the water percent would get greater as you approach the 100 percent water line.

Then this particular area right here would be the area that we would consider the production of this particular, whatever it be, oil or gas, to come out of this particular reservoir.

And this would be the area where we would term the irreducible water would be found.

By Mr. Lewnes:

Q. Mr. Olson, is it not a fact what you have shown here is a rather thin transition zone and that all cases do not show such a sharp decline of the transition zone as you have indicated, isn't that correct?

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A. I have shown a small transition zone here, yes, because

it represents the type of transition zone we would find in this particular field.

Q. Are you stating that your logs that you have used in this proceeding do not show a more gradual approach through the transition zone down to the gas water contact? A. This is my gas water contact (indicating).

Q. Pardon me? A. This is my gas water contact here. Are you referring to the 100 percent water line?

Q. Yes, I am. A. These sands in the larger reservoirs that we have in this field, namely the Klumpp D, the Homeseekers E, and the Nodasaria A, are very thick sands. And I believe that I could state that the transition zone on all of those reservoirs would be very small.

Q. So, in other words, again, if I am correct, you are stating that none of your logs for any of these wells show a transition zone in a more gradual form, that is going from what you have called your gas water contact, through, up to your 100 percent water saturation—none of your logs show a more gradual approach than that which you have indicated? A. Well, now, I can't say exactly what I have indicated here would be found on every log.

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I have given you an example here. And I have stated that the transition zone on these three major reservoirs that I have defined are comparatively small when you correlate them with the entire thickness of the reservoir, yes.

Q. All right.

Now, how have you determined your interstitial water, in these proceedings? A. Well, I have used this capillary pressure data where it was available on these three reservoirs that I have already indicated, and I have used these or the data or curve that was constructed, using the basic data in order to construct the curve permeability versus

irreducible water I used this curve in each case of each well, using all the permeabilities that I considered representative and averaged, taking off the permeabilities off the core analyses and applying that to the curve that went along with this data, and then obtaining off this curve the various percentages of irreducible water and averaging all these particular samples up in each one of these wells to arrive at the average interstitial water for the reservoir.

Q. Well, when you talk about these curves, are you talking about the irreducible water graphs? A. That is right. It is—well, the title of the curve is called irreducible water versus permeability.

2361

Q. In other words, here again have you not applied your permeability cut-off, that is you only used those samples that you thought were representative of permeability, again eliminating some of them? A. I used the samples that I considered to be representative, yes, sir.

Q. Is it not a fact that the low permeability samples that you have eliminated do in fact have a higher connate water than the permeability samples which you have used as representative? A. That is right, yes, sir.

Q. Now, in your direct testimony I believe you stated that you had made electric log calculations in arriving at your connate water? A. In some of my other reservoirs where I did not have this particular data of capillary pressure data, I certainly looked at the electric log, to use that as one factor in making my decision on what to use for an estimated interstitial water on other reservoirs where I did not have the capillary pressure data.

2362

Q. Well, you just stated you looked at electric logs. I am referring to your statement that you made electric

log calculations. When did you make these electric log calculations? A. I made them during the course of my particular work, in making up this estimate.

Q. You mean in making up this present estimate here, and not the 1959 estimate? A. Well, I always use the same methods, no matter what year I make an estimate.

Q. When were the irreducible water graphs made available to you? A. I am not positive when we received this data. But I believe we had this data—I know we had this data—I know we had this data for 1959 estimate and I am not positive whether it was available during 1957.

Q. Is it not a fact that the Staff requested that you supply it with the electric logs calculations you referred to? A. The electric log calculations that I made I didn't even bother to keep myself.

Q. Well, it is a fact, is it not, that the Staff did request the electric log calculations? A. It is possible that they did, yes.

Q. Well, did they request them or did they not request

them? A. I believe they did request them, and I had stated at the time they requested them that I just had made hasty calculations on a piece of paper and didn't even have them, myself. Q. In other words, you have all the work papers or the work data that you used to determine the reserves in these reservoirs, exclusively of the electric log calculations which you said you made? A. No, I probably made many notes about many things that I never kept in making up my calculations. I don't keep every scrap of paper that I use.

Q. Well, am I to infer from what you have just stated that you normally make these electric log calculations in any estimate you might prepare? A. I use all the avail-

able data that is available to me. If the electric log is available to me, I will use that.

Now, I may find in my calculations of an interstitial water calculation off of an electric log that in my own best judgment is not a representative interstitial water calculation or is not a representative interstitial water percent, because of my knowledge of the area. Or it may be something happening in the running of the electric log that would not exactly give me the proper percentage or the range in percentage that

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would normally be found in this particular area.

So I might run an electric log calculation on interstitial water and find it not to be representative and just discard it and say I can't use that.

I might add that a lot of things we use are tools. They are not perfect science tools. And we have to use an awful lot of judgment in whether some basic information is good, or whether it isn't good.

So to arrive at, say, one interstitial water percentage does not mean that I have arrived at it by just using one factor. I have arrived at it by probably several factors involved in it.

Q. It is a fact, is it not, that the connate water that you have used in your exhibits in 1957, 1959, and the present exhibit have not changed, I believe, except for one very minor alteration; is that correct? A. I would—if you have checked it, I will accept that as correct.

Q. Now, your testimony in regards to the 1959 exhibit, which appears at transcript page 1346, indicates that you used coring. And no mention is made of having made any electric log calculation at that time, or the use of irreducible water graphs?

(2364)

Now, can we safely assume that you did not have the irreducible water graphs when you made your 1959 exhibits, and

2365

that you did not make any electric log calculations when you prepared your 1959 exhibits? A. No, you cannot assume that, because that wasn't stated at that time. It was just left out for some unknown reason.

Q. Now, what tests are run on the cores in the laboratories—and keep it consistent if you like—in order to arrive at the factors used in the irreducible water graphs? A. Would you rephrase that or just make it a little more explicit as to what you are driving at?

Q. Well, for example, in order to arrive at irreducible water graphs, where are irreducible water samples taken from? A. Well, the samples, of course, are taken through the entire reservoir, or how many. It may vary from one sand to another, how many samples they take.

Q. Well, do you take them in the irreducible water zone, or do you take them in the irreducible water zone and in the transition zone, or do you take any of them down into the 100 percent water saturation zone? A. It is possible that cores could be taken all the way from the top all the way down to here.

Q. Well, which ones do you use in making up your irreducible water graphs? A. The samples that are used are from this point to this point.

2366

Mr. Deakins: Why don't you state what those points are?

The Witness: From the top of the pay down—well, I take that back. I am not positive exactly what cores—well, yes, I know what cores they used, because they state in there according to depths. They could take samples

all the way from the top of the pay, say, down to or including the 100 percent water line.

By Mr. Lewnes:

Q. But in order to arrive at your interstitial water, is it not a fact that you would not use any irreducible water samples taken in the transition zone? A. Let me state that we are not interested in the transition zone, to begin with, because we have not used any net pay in that particular zone.

Q. In other words, in every one of your net pay determinations you have taken the bottom of your sand at some point above the transition zone; is that correct? A. We have counted the net pay from the top of the sand down to the gas-water contact. The gas-water contact, the way we pick it normally, is right at the top fringe of where the transition zone starts. Now, if we were to pick this point of 100 percent water as our contact point, then we would have had to include the net pay within the transition zone. We did not do that in this case because of picking our gas-water contact right at the top fringe of the transition

2367

zone. So this is the only area that we are interested in, and the only area that is represented in our reserve estimates.

Q. One final question, again. So, in other words, in order to arrive at your interstitial water in relation to the way you have picked your net pay, you would not use any irreducible water samples taken in the transition zone; is that correct? A. That is correct.

Q. And you have not? A. No, sir.

Mr. Lewnes: I think we can quit at any convenient time you like.

Presiding Examiner: The court will be in recess until

10 o'clock tomorrow morning, at which time we would reconvene in the Indian Claims Commission hearing room No. 4808.

Off the record here.

(Whereupon, at 4:30 p. m., the hearing was adjourned until Wednesday, December 6, 1961, at 10 a. m.)

2368

Wednesday, December 6, 1961.

2369

PROCEEDINGS

Presiding Examiner: Are there any preliminary matters this morning?

E. A. Olson

resumed the witness stand and, having been previously duly sworn, was examined and testified further as follows:

The Witness: Mr. Examiner.

Presiding Examiner: Mr. Olson.

The Witness: After having the opportunity of reading over the transcript of yesterday afternoon, I found a few instances where I believe there were some misconceptions on how I used the material that was available to me in arriving at some of my estimates, and I would like to clear up the record, if I may, at this time in making it more clear in the record of how certain things were arrived at.

Presiding Examiner: You may proceed, Mr. Olson.

The Witness: In the first instance, I would like to turn to page 2331 of the transcript.

Presiding Examiner: Mr. Olson, you mean 2231.

The Witness: Excuse me. I have page number 2331.

Mr. Deakins: Volume 19, Mr. Examiner.

The Witness: Volume 19.

Mr. Deakins: Do you have that?

Presiding Examiner: Oh, I am sorry, I was looking at the wrong one.

2370

The Witness: And on line 2, Mr. Lewnes referred to a recovery of 93 percent that I had used in my exhibit.

I wish to first state that no place on my exhibit X-2 on page 1, do I use or do I have 93 percent shown.

I wish to also state that I have used here——

Presiding Examiner: Mr. Olson, in that connection, as I recall what staff counsel asked you was this. In Exhibit No. 2, X-2, at line 16, you estimated the gas in place to be so much.

The Witness: Yes, sir.

Presiding Examiner: Over in the total column marked "M". And then on line 18 in that same column in this same exhibit you estimated the recoverable gas at so much. And as I recall, he said to you—if you take his figures, which was roughly 93 percent.

The Witness: That is right, except I would like to clear the record on recovery of the particular reservoirs—I would like to bring out the abandonment pressure in order to prove some points about the recoveries that we expect in this field.

Presiding Examiner: Go right ahead, sir.

The Witness: We have used in this case 500 pounds which we certainly feel is reasonable abandonment pressure to use. And we also feel that the wells are certainly capable and feasible to arrive at this poundage for abandonment

2371

pressure.

Now, we base this on several examples that we have in this particular area, namely in the Iowa field in Calcasieu

(2371)

Parish, in which case—this field is a field that is faulted up considerably. However, there are wells that are in separate fault blocks and you could consider them as an individual reservoir producing out of a single fault block.

We have examples here, Mr. Examiner, of wells that were abnormally pressured at about 9,000 pounds at a depth of approximately 10,200 feet, at which time they are now producing, are still producing at pressures below 500 pounds.

We also know of areas in the country other than South Louisiana where there are many cases where wells are producing below 500 pounds.

I do not have those areas in mind at the moment, but if staff counsel wishes we can furnish him with a copy of those particular fields and areas where this pressure of lower than 500 pounds can be exhibited.

Also, in the same Iowa field, which is more pertinent in this particular case since it also is an abnormally pressured field, there are several wells that are still producing 200 and 300 Mcf per day, at flowing tubing pressures ranging from 30 to 50 pounds.

So with this added information on our abandonment pressure of 500 pounds, we feel certainly that it is reasonable.

2372

There are no entire fields in South Louisiana where the entire field has been depleted below pressure 500 pounds.

The reason for that is because particularly in the abnormally pressured fields these fields only came into existence a few years ago and they have not had the opportunity to produce a sufficient amount of gas to deplete the reservoirs.

Mr. Lewnes: Mr. Examiner, I don't intend to interrupt the witness, but perhaps it would be better if on each

phase of this addition to the testimony we could cross-examine on that particular phase, rather than repeat ourselves by going back to what he previously said.

So if this is going to cover—if this is all the additional testimony on the recovery factor, I think it might be most proper if we cross-examine him on that particular phase right now.

Presiding Examiner: Did that complete your statement on that point?

The Witness: On that particular phase.

Mr. Deakins: I think that is the right way to do it, too.

Presiding Examiner: Then, Mr. Lewnes, if you have some questions to ask on this particular phase of his testimony, you proceed with it.

2373

CROSS-EXAMINATION (Cont'd)

By MR. LEWNES:

Q. Am I correct now, Mr. Olson, that you have stated that you know of the specific fields that have been depleted down to 500 pounds abandonment pressure? A. I said not in the south Louisiana area, but there are undoubtedly some fields in other areas of the country that I don't have the information available at this time on, but that I am confident that they are producing well below the 500 pound abandonment pressure.

Q. In other words, what you are saying is that you are using south Louisiana wells to prove up the abandonment pressures which you indicate for Rayne field, but you do not have any comparable fields to Rayne field that you could make that comparison with, in south Louisiana? A. The reason I brought out the other areas, Mr. Lewnes, was that you asked me yesterday, do you know of any fields throughout the entire United States where this

(2373)

exists or where you can obtain 93 percent recovery. And we can exhibit some cases in other parts of the country, yes, sir.

Mr. Lewnes: Will the Examiner request the recorder to read back my question to the witness.

Presiding Examiner: Yes. Will you read the question, Mr. Reporter.

(Question read.)

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The Witness: Yes, the field that I named, of Iowa field, is a comparable field in many respects to the Rayne field. That is why I used it as an example.

By Mr. Lewnes:

Q. But that field has not been depleted down to 500 pounds abandonment pressure? A. There are several wells in separate fault blocks that I stated could be assumed as being one reservoir that are producing below 500 pounds.

Q. So, again, we are talking about wells and not fields? A. We are talking about individual reservoirs that could be actually considered a field by itself.

Q. You have stated that these wells which you are referring to, the Iowa, in the Iowa field, have numerous separate faults. Are you stating that those, that is the fault patterns existing there are identical or similar or as numerous or— all right, as the fault patterns in the Rayne field? A. The fault picture of Iowa field is not exactly the same as the Rayne field. No field is exactly the same in faulting. However, I don't see any bearing on what that has as far as the capabilities of the wells to produce below the 500 pounds.

Mr. Deakins: Did you mean not the same in faulting—

2375

you mean not the same as any other field, or as——

The Witness: Well——

Mr. Deakins: You left your answer in the air there, as far as I am concerned.

The Witness: I meant to say that the faults found in Rayne field may run in a little different direction than, say, the faults that run in the Iowa field. They wouldn't be, say, exactly the same size. They would be comparably the same size. But you don't find the exact picture on a structure map of one field that you would find on another field.

Mr. Deakins: O. K.

By Mr. Lewnes:

Q. Mr. Olson, isn't it a fact that if a well is in an individual fault block, that fault pattern has a direct bearing on the productivity of that well? A. Excuse me a second.

Mr. Lewnes: Mr. Examiner, will the record reflect that Mr. Olson has left the stand and is consulting with Mr. Marshall.

The Witness: Pardon me. I meant to ask you—did you——

Presiding Examiner: He asked to be excused.

Mr. Lewnes: Yes, sir. I just wanted the record to reflect that.

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Mr. Deakins: Mr. Reporter, will you read that question back? It is obvious to me from the questions this witness is discussing with me and with Mr. Marshall—I don't think he understood the question. Please read it back to him, and also for my edification.

Presiding Examiner: Read the question, Mr. Reporter.

(Question read.)

Mr. Deakins: Now, I am going to object to the question as not specific.

We have used the words "availability" and—let's see

—and "reserves" in here. But this word "productivity" is what through the witness here.

Do you mean—what do you mean by productivity? That is what I mean.

Mr. Lewnes: You can substitute the word "availability" for "productivity".

Mr. Deakins: O. K.

Well, he isn't testifying as to availability, Mr. Examiner. But——

Presiding Examiner: This line of questions goes to the amount of recovery. What he was testifying to is additional testimony this morning, which was as to the 93 percent recovery and that is what this line of questions is intended to elicit, as I understand it.

Mr. Deakins: I wanted to be certain on that. That is

right.

The Witness: I can attempt to explain it in this way. The examples that I used in the Iowa field are smaller reservoirs than we have present in the Rayne field. And we are able to see at a much earlier date the fact that these wells are capable and are still producing at 500 pounds or less and will come out with a high recovery.

Mr. Deakins: Now, that wasn't responsive to his question. Read the question back to him. Now, you answer the question he asked you, whether the fault blocks—you got me fouled up with productivity. Read that original question back to him. That is what he wants to know.

Mr. Lewnes: Well, may we have the answer that the witness just gave read, first, and then read the question back.

(Answer and question read.)

The Witness: I wouldn't say that it has any direct bearing as to the capabilities of the well to produce.

We definitely get a more instantaneous productivity index

as a result of it being in a smaller reservoir. And we can determine the recovery at a much earlier date than we can in a larger reservoir.

By Mr. Lewnes:

Q. Mr. Olson, isn't it a fact that in the Rayne field there are reservoir pressure differences on either side of

2378

the fault that you have indicated in your exhibits? A. Would you explain more clearly on which fault you are talking about and which reservoir you are talking about?

Q. Well, you can go down the line and pick out any reservoir you like or all of them. Let's go through all of them. A. We used the same pressure on all of the reservoirs, with the exception of one, the Nodasaria A, in which there is a slight difference of—in the Nodasaria A north segment we used 11,008 pounds, and in the south segment we used 10,972, which is just a very minor amount difference in pressure.

Q. Well, wouldn't the productive characteristics of the well depend to some extent on the reservoir pressures? A. I would say yes.

Q. Mr. Olson, apparently yesterday you didn't have these facts before you, and now this morning you do.

Could you tell us what the source of this information was that you are now testifying to, this morning? What was your source of that information? A. Would you clarify your question on exactly——

Q. In regard—— A. In demonstrating to me what you mean by source of information.

2379

Q. Now——

Mr. Deakins: Wait a minute. You listen to the question. The question apparently you didn't have it before you yesterday. Is that a fact or not?

The Witness: I had this information well in hand yesterday, yes, sir.

By Mr. Lewnes:

Q. You did not testify to that yesterday. A. There are various reasons for not being able to answer some of your questions in the manner in which I would like to bring out additional information. And I am doing this this morning because I did not have the opportunity to do it yesterday.

Q. Are you stating that you were precluded from testifying in any manner you so desired yesterday upon cross-examination?

Mr. Deakins: I don't think he intends to do that, Mr. Lewnes. The reason is the witness answered the questions so precisely yesterday that he didn't give an explanation. That is what he means to say. Isn't that right, Mr. Olson?

The Witness: That is correct.

By Mr. Lewnes:

Q. In other words, what you are testifying now is that you had all this information with you yesterday, but you are now testifying as to that information today?

A. Yes, because I felt that I could clear up the record in much better fashion by putting this information into the record than it was previously.

Q. All right.

Now, what was the source of the information that you have there? Where did you obtain that information from?

A. I obtained it mainly from our own files.

Q. All right——

Mr. Deakins: Mr. Lewnes, if you want me to back up something.

Mr. Lewnes: Yes, sir.

Mr. Deakins: Do you have something on the Iowa field in your possession there?

The Witness: Yes.

Mr. Deakins: Well, show it to Mr. Lewnes and——

Mr. Lewnes: That is all right. I don't want to see it.

He can proceed with his next clarification of his cross-examination yesterday.

The Witness: The next phase which I felt needed to be clarified somewhat started on page 2346, with regard to the porosity that I obtained in the Mouton No. 1 well, and the procedure that was used in determining this porosity.

I wish to add to this testimony the fact that was brought out yesterday, that 10 feet on the lower part of

this sand was not cored. And I feel that if this 10 feet had been cored, it is entirely possible that instead of having 22 samples in this particular sand we could very well have had 32 samples, where we picked a total net pay of 44 feet.

Now, the fact that I want to bring out here, and it did not come out in the testimony yesterday, is that it is our purpose at all times to use all of the available information that we have on each reservoir.

In this particular case there were two additional wells that were cored.

And checking into one of the wells, namely the W. Petitjean No. 2, that is checking into the core analysis there, if we had taken—and this has reference to this 10 feet that was not cored at the bottom of the sand in the Mouton No. 1—if we had taken from the gas water contact up 10 feet on the W. Petitjean No. 2 well, we would have used 8 samples out of the 10 that were cored in that well and would have come out with a percent of 21.6 percent.

I further want to state that in this particular well the top 25 feet was not cored.

Now, it is entirely possible that if the top 25 feet had been cored in this well we probably would have had around 40 some odd samples to estimate the porosity. And in this particular well I believe we picked some 40 some feet of net

2382

pay.

Which all comes around to the fact that we attempted in every case to not just use an isolated case, but to use all of the information that we had in arriving at what we thought was certainly a reasonable and correct porosity for the reservoir.

By Mr. Lewnes:

Q. Now, Mr. Olson, we aren't so concerned as to what you might have done or would have been. We are more concerned with what you actually have done.

Now, for example, you just stated that if you had the other cores taken in the other 10 feet you would have used them.

Are we to assume that you would have used all 10 cores taken in that 10 foot interval or you would have only used those that did not have a low permeability? A. I would have used what I would consider to be the best information available at that time the well was cored.

In other words, as I have stated previously, in my best judgment of what I consider are the porosities that should be used and are in the core section of the sand, that those are the ones I would have used.

Q. Now, the fact nevertheless still remains on this Gerard Mouton No. 1 well, in arriving at your porosity you took—there were approximately 47 samples, core samples

2383

taken. Am I correct? When we talk about 47 core samples we are talking about a core sample taken at each one foot

interval? Is that correct? A. Do you have the core analysis there? That would indicate whether it was taken every one foot or every half foot.

Q. I will let the record reflect that I am handing the witness the core descriptions. A. In this particular case it appears that it was taken at one foot intervals.

Q. All right.

Now—and the fact still remains that out of that 47 foot interval, where there were 47 cores, you used 22 samples, isn't that correct? A. That is correct.

Q. All right. And these 21 samples were not continuous samples? In other words, you may have taken one sample at the bottom of this 47 foot interval, a couple more somewhere in between, and a couple more on top, to fully constitute the 22. But they were not 22 continuous samples, were they? A. No, that is correct.

Q. All right. And after taking these 22 samples you in effect compacted them together, or added them up, and came out with an average porosity, isn't that correct?

A. That is correct.

Q. And you took that porosity which you got from these 22 samples, which were not continuous samples, and applied it to a full 44 foot of net pay, isn't that correct? A. Yes. But you are forgetting that there are some shale breaks in this sand, Mr. Lewnes, that you wouldn't normally use the porosity of a shale break.

Q. But isn't—well, then, isn't it a fact then that you should have eliminated those shale breaks from your 44 foot of net pay, since you eliminated them in your determination of your porosity? A. I believe the overall thickness was 55 feet in this particular well, of which we used 44 feet of net pay.

Q. That is correct. And it was in that 44 feet of net pay —if you take that same 44 foot net pay interval and com-

pare it to the cores taken within that same interval, you have eliminated approximately 22 samples—25 samples from within that 44 foot interval.

Now, in eliminating those 25 samples, you did not make a similar elimination of that footage within your net pay, isn't that correct? A. Again I would like to state as I brought out yesterday, Mr. Lewnes, that the technique which is used by the oil industry has some fallacy in that everything can't be done to the exact science of engineering. And it is entirely

2385

possible that this could be an isolated case where this condition exists as you have stated. But that is where judgment comes in and that is where knowledge of the area comes in, in making your estimate.

Q. Now, irrespective of whether it may or may not be an isolated case, I believe my question went to the point of whether what I had stated was or was not a fact. Now, I ask you if you can answer that question. A. What I did and what you have stated that I have done is a fact.

Q. All right. A. And that is why I did it, because of my judgment factor.

Q. All right. Thank you.

You want to proceed?

Mr. Deakins: Go ahead now.

(Discussion off the record.)

The Witness: I would like now to clear up one last point found on page 2357 of the transcript, in which we had a discussion on the transition zone of a resorvoir, having to do with the interstitial or irreducible water.

Checking into my records, I further wanted to make sure that what I had used previously and what information I had previously was correct, and that is that to our knowledge there were no analyse made of the water percentages in the

2386

transition zone in this particular field.

If there had been any, we had no knowledge of it.

And also I would like to state that we did not include in our reserve estimate the net pay in this particular zone. If we had included it and had additional information on the water saturations in this zone, it would be my guess that our reserves probably would reflect about five percent higher than we now show.

By Mr. Lewnes:

Q. Does this conclude your clarification? A. Yes, sir.

Presiding Examiner: Mr. Lewnes, have you any questions on this last clarifying statement of the witness?

Mr. Lewnes: No, Your Honor, because our cross-examination will cover certain phases of that now.

Mr. Deakins: Are you going to——

Mr. Lewnes: Proceed with the cross-examination.

Mr. Deakins: O.K.

2387

By Mr. Lewnes:

Q. Mr. Olson, will you state in your opinion or name in your opinion some of the recognized authorities on the interpretation of electrical logs, that is, one or two firms and some of the recognized outstanding individuals who are noted for their background in the interpretation of electrical logs? A. Well, I am not sure of the names.

I can state the Schlumberger Corporation and Lane Wells—those are two of the well logging services that have competent men that are considered experts at interpreting logs. I can't name their names off at the moment.

Q. Well, did you include, then, within that definition of competent people who work for Schlumberger Mr. Doll? A. Yes, I believe I do remember an article he wrote.

Q. And Mr. Tixier? A. That is right, yes, sir.

Q. Mr. Olson, do you have your electric log for the W. Petitjean and No. 2 in the Klumpp D. Sand which I believe you had just testified to? A. No, sir, I do not have it.

Q. Let the record reflect that I am handing a copy of that log to the witness.

Will you give us the top of the sand which you

2388

have used for the Klumpp D. as indicated by that log? A. The Klumpp D?

Q. That is correct. A. Yes, sir. The top that I picked for this particular reservoir, the Klumpp D. and the W. Petitjean and No. 2, was 11,280 feet.

Q. Now, did you pick that off your SP, or if not how did you pick it?

Mr. Deakins: What is an SP?

Mr. Lewnes: Spontaneous potential.

The Witness: You could possibly use that as a place to pick it, yes, sir.

By Mr. Lewnes:

Q. Well, is that what you used? A. I used combination of that and the resistivity curve.

Q. All right. Now where is the bottom of your sand? A. The bottom of the sand that I picked was at 11,324.

Q. And did you pick that in the same manner that you picked the top? A. That is correct.

Q. And what is the net pay? A. The net pay that I arrived at here is 42 feet.

2389

Q. Now, by looking at that log, isn't it a fact that the 16 inch and the 64 inch curves decrease steadily in resistivity from 11,275 feet to 11,324 feet? A. There is some decreasing in resistivity, yes.

Q. Well, is there a steady decrease in resistivity? A. There appears to be a uniform decrease.

Q. And does this not indicate that there is a transition zone there? A. I wouldn't say so, no, sir.

Q. Well, what would you say that that indicates? A. Well, you can get all types of variations on a log. It just probably indicates that there is a little less resistivity in that particular area, and also it appears that there is some shale interference there that would also cause the resistivity to decrease.

Q. Well, doesn't your SP curve indicate that there is sand throughout that interval? A. It indicates both sand and shale.

Q. Well, didn't you count net pay in that interval? A. Yes, sir, I did.

Q. Well, if there was shale why didn't you exclude the shale from your net pay? A. I did.

Q. Well, let me ask you a point blank question. Is there or is there not a transition zone there?

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A. I am sure there is a small transition zone there.

I am not positive how large it is. Maybe you know how large it is. I have no particular idea, myself.

Q. Well, in the interpretation of logs, isn't it a fact that when you start getting a decrease in resistivity that reflects an increase of water saturation? A. Not necessarily, no.

Q. Well, let me add to that question. When your SP shows sand, isn't that a fact, that as your resistivity decreases steadily that is indicative of a higher water saturation? A. It is possible, but it is not necessarily so.

Q. Well, what else could it be? A. Permeability.

Q. I should like to read a section from a paper prepared by Mr. Tixier, who is the same author—rather, who is the

same Tixier that Mr. Olson has attested to as being a competent geologist and well known in the field for his log interpretations.

Mr. Deakins: Mr. Examiner, neither Mr. Tixier nor Mr. Lewnes have been sworn, and therefore I object to this as pure hearsay.

Mr. Lewnes: I intend to show this statement to the witness and ask him whether he agrees or disagrees with what is contained on this paper.

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Mr. Deakins: Well, it is not proper to read it into the record first because those things get turned around to be evidence, and that can bring on reversal error.

Mr. Lewnes: In order for me——

Mr. Deakins: It is not produced under oath in the hearing and subject to cross examination.

Presiding Examiner: Mr. Lewnes, I think maybe you ought to show it to the witness first. Show him what you are going to read.

Mr. Lewnes: All right.

(Confers.)

Mr. Deakins: It is all right with me.

By Mr. Lewnes:

Q. The paper I want to quote from is titled "Evaluation of permeability from electric log resistivity gradients," by M. P. Tixier. In that paper, under the heading of "Gradient of Resistivity," it reads: "Figure 1 is an example of a log recorded opposite a sandstone where the water saturation increases progressively with depth. A transition zone can be seen on the resistivity log between A and B, where the curve is close to a straight line."

Now, I hand the copy of this paper to the witness and refer him to the Figure 1, and ask if that figure appearing

on there showing the resistivity curve does not in fact compare similarly with the resistivity curve on the log you are

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now discussing.

Mr. Deakins: Now just a minute, Mr. Witness. I object to that, Mr. Examiner, as not proper cross examination. It is incompetent, irrelevant and immaterial to prove any fact in these proceedings.

Presiding Examiner: Well it has been the experience of this Examiner, which has been limited, that no two logs ever look alike, but that the general knowledge obtained from looking at a number of logs out of a particular field gives you a general knowledge.

Mr. Lewnes, when was this paper written that you are now referring to?

Mr. Lewnes: Let me see if there is a date on it, Your Honor.

Mr. Deakins: What is it published in, do you know?

Mr. Lewnes: Let me find out.

Mr. Deakins: Mr. Examiner, the reason I objected: This may have been part of a letter that Mr. Tixier wrote to his mother, for all I know. And until there is some background shown that this was published as an—let's see—an opinion of an expert is accepted in the industry as the proper way of interpreting these things. I just don't think it is material. I don't think it hurts us actually. I know what Mr. Lewnes is getting at. But I hate to see the record cluttered up with a lot of things

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that are just sidebar statements of somebody that isn't here to defend it or say that he even told the truth then.

Presiding Examiner: Well, I gathered what Mr. Lewnes was doing was to ask this witness about this, and I gathered from the statement—the witness said that he recognized

the author of this statement as being a man of experience in the reading of an electric log.

Now I think it is true—and I am sure Mr. Lewnes will agree with this—that the log that the expert is interpreting —I don't even know what field it is from or what state it is from.

Mr. Deakins: It may even be a coal mine, Mr. Examiner. That is the point I make.

Presiding Examiner: Well,——

Mr. Lewnes: I think the log itself indicates—rather, the Figure 1 indicates electric log of Layton, Oklahoma, sand.

Mr. Deakins: You can't swear to that, Mr. Lewnes.

Mr. Lewnes: If we were going to go through the whole article—we can certainly show he is talking about a gas bearing sand.

Mr. Deakins: Who can say that under oath in this hearing? I can't. I know you can't. Only Mr. Tixier can say that.

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Presiding Examiner: Well, the witness on the witness stand is——

Mr. Deakins: Mr. Examiner, if this witness knows about that field, that is something else again. He could ask him if that appears to be a typical log from that particular field, if that is a gas well. As I said, it may be a coal mine or even an iron mine.

Mr. Lewnes: Mr. Examiner, if we are going to restrict all our questions and comparisons to this particular field, I think the record clearly shows that the witness has gone far afield in other fields to show what his abandonment pressures—what his recovery factor is going to be based on abandonment pressures of some other wells in some other field.

Mr. Deakins: Well, Mr. Examiner, I have no objection—

if we stay within this witness's knowledge, I have no objection.

Presiding Examiner: Well, hand the paper to the witness.

(Mr. Lewnes hands the paper to the witness.)

Presiding Examiner: Now then, ask your question now of the witness.

Mr. Lewnes: All right.

By Mr. Lewnes:

Q. Are the log characteristics shown in Figure 1,

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on that Figure 1, between the designated area A and B which Mr. Tixier has said is a transition zone—does that not compare or is that not practically identical with the log characteristic as shown on the W. Petitjean and No. 2, Klumpp D. sand, between the top and bottom of your net pay?

Mr. Deakins: Mr. Examiner, can I take this witness on Voir Dire?

Voir Dire Examination

By Mr. Deakins:

Q. Mr. Witness, do you know as a matter of fact that that is a log from an oil or gas well? A. No, sir, I do not know.

Q. Did you ever see that before in your life? A. I don't remember ever seeing it.

Q. Do you know where—is there such a field to your knowledge known as the Layton Field—L-a-y-t-o-n? A. I know nothing about the Layton Field personally. There could very well be a field by that name Layton.

Q. You don't know that there is a Layton Field, do you? I mean—— A. I have never seen it, no, sir.

Q. Do you know there is a Layton Field in Oklahoma?

A. I have no knowledge of a Layton Field, that I know of personally.

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Q. Now did you personally observe any of Mr. Tixier's interpretation of any particular log, to know whether or not his interpretation was correct in your opinion? A. I haven't checked this particular example, no, sir.

Mr. Deakins: I object to this as improper cross examination, Mr. Examiner, and on the other grounds which I stated previously.

Mr. Lewnes: Mr. Examiner, we don't mind the witness's being led, but I think we have gone a little too far. But we will withdraw the question. I think we have another question we can ask the witness.

Mr. Deakins: I wasn't leading the witness, Mr. Examiner. I was trying to lay the foundation which counsel for the Commission failed to do.

By Mr. Lewnes:

Q. Mr. Olson, you have just stated that the decrease in resistivity on the log under discussion could be caused by a change in permeability? Isn't that what you just stated?

Mr. Deakins: That is not the Layton log.

Mr. Lewnes: No,——

Mr. Deakins: The one the year before?.

Mr. Lewnes: W. Petitjean and No. 2.

The Witness: No, I don't think I expressed it in

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quite that same manner that your question is——

Mr. Lewnes: Well, Your Honor, I think this is a very important point. I think if we have to, that we should go back to this thing and have the reporter read exactly what the witness stated.

Mr. Deakins: I agree with you.

Mr. Lewnes: Because I think I correctly stated what his answer was.

Mr. Deakins: I agree with you, Mr. Lewnes. Mr. Examiner, I so move.

Presiding Examiner: Can you find the question and the answer, Mr. Reporter?

(Question and answer read.)

Q. Now my question, Mr. Olson, was: Wasn't it your testimony that a decrease in resistivity on the log under discussion could be caused by and perhaps you are objecting to the words "have a change in permeability".

Now wasn't that your testimony? A. I mentioned permeability mainly because the lower the permeability the higher the interstitial water would be, and the larger the permeability the lower the interstitial water would be.

Q. All right.

In other words, what you are stating now—and I

believe you stated that yesterday: That the lower permeability samples have higher interstitial water? A. That is generally correct.

Q. Well, now, in this particular case, since you said it could be a change in permeability, would that be a decrease in permeability? A. It is entirely possible, yes, sir.

Q. So then it follows, again, that as your permeability is decreasing your connate water is increasing? A. Lower permeability will give you higher interstitial water.

Q. And are you saying now that that is what exists on that log, in your opinion? A. I don't know what exists in this log.

Q. Do you have the core analysis there for the Klumpp D. sand, on the W. Petitjean and No. 2? A. No, I do not.

Q. Apparently I am walking back and forth with it. A. Thank you.

(2398)

Q. Will you look at sample No. 38? A. Yes.

Q. Now that shows an irreducible water of 8 per cent, isn't that correct? A. According to this analysis, it so states.

Q. And does it not also state under that heading——

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under the heading of "Probable Production," it states "Water," isn't that correct? A. That is what this so states, yes.

Q. Now will you look at sample No. 31? Does that not indicate an irreducible water saturation of 19 per cent? A. That is correct.

Q. And under probable production, that also has water, isn't that correct? A. That is correct.

Q. One more sample.

No. 25: That has an irreducible water saturation of 33 per cent. And under the probable production, that also says "Water," isn't that correct? A. That is correct.

Q. Now, will you turn to the core analysis——excuse me one moment.

All right. Now will you turn to your Exhibit X-2 and tell us what you have indicated there for your connate water for the Klumpp A—that is your interstitial water or connate water? A. I used 34 per cent.

Q. Well, the problem I am having, Mr. Olson, is that if these core analyses indicate that the 8 per cent and the 33 per cent, they indicate that that is going to produce

2400

water, now is it that you show a connate water of 34 per cent and expect to get gas? A. I can't see any way of making any comparison with the material that he gave me in answering that question.

Mr. Deakins: Explain it, then, for the record.

Mr. Lewnes: Well, I believe we are talking about the same —we are talking about connate water. And if certain analyses show the connate water to be at a lower per cent than what he has shown on his exhibits and they don't expect to get gas, they expect to get water, how does he expect to get gas when he uses a much higher connate water?

The Witness: One reason why they expect to get water in the examples you have shown me is because it is below the gas-water contact—those samples that you indicated.

By Mr. Lewnes:

Q. Well did you use those samples in determining your connate water? A. I used the information that was presented in this entire report.

Q. Well, specifically, did you also use those samples that I have referred to? A. Those samples were evidently used to construct the curve of permeability versus irreducible water. And

2401

what I used in relation to the curve was all of the representative permeabilities that I considered in arriving at my interstitial water for this particular well—reservoir, I should say.

Q. And you used those curves to determine your connate water? A. What curves now are you talking about?

Q. The curves you just mentioned. A. This was one curve that I mentioned here.

Q. Oh, we are talking about those irreducible water curves? A. That is correct.

Mr. Deakins: You used all those, is that what you mean to say?

The Witness: Where——

Mr. Deakins: It is correct that you used all of them?

The Witness: Where this information was available, and

(2401)

where I considered it to be representative of material that should be used "A" I used it.

Mr. Deakins: That wasn't what your last answer was. You see, you said "Yes."

The Witness: I used this curve in this particular case, which I think I told Mr. Lewnes.

2402

By Mr. Lewnes:

Q. Well, Mr. Olson, then, to clarify the entire matter now, the irreducible water samples that we referred to, that is with the 8 per cent, 19 and 33, they were used, I believe you testified, to make up the irreducible water graph which you have used? Now isn't that your testimony? A. These points were used in making up this particular graph that you have in question, yes.

Q. Which you have used? A. That is correct.

Q. And those samples were taken below the transition zone? A. They appear to be taken below the gas-water contract, yes, sir.

Q. And that would be below the transition zone, doesn't that follow? A. I would say—I am not sure.

Q. All right.

I might add that one of the samples was not even taken in that particular sand that you had in question.

Mr. Deakins: That is a point.

Mr. Lewnes: Nevertheless, that was still plotted on the graph, wasn't it?

The Witness: It was plotted on the graph, but was

2403

probably not particularly needed to construct this graph for the area that it encompassed.

By Mr. Lewnes:

Q. But it was plotted on the graph.

Mr. Olson, in your testimony, in 1959, at transcript 1470—and I will hand you a copy of that—you said you had not seen any evidence of water encroachment in reservoirs of this type. Do you recall that? A. If you will show me, yes, show me the transcript.

(Hands transcript to the witness.)

Mr. Deakins: Look at the date of that, to be sure you know what he is talking about.

Mr. Lewnes: 1470.

Mr. Deakins: Yes. I told him to look at the date of this.

Mr. Lewnes: Oh.

The Witness: I see this statement, yes.

Mr. Lewnes: All right.

By Mr. Lewnes:

Q. In other words, you made the statement that you had not seen any evidence of water encroachment in reservoirs of this type? A. (Nods.)

Q. Now my next question is——

Mr. Deakins: Now wait a minute. Mr. Lewnes, I object

to that as a misstatement of the testimony of this witness, to which this witness nodded his head. What the witness said: "We have not seen any evidence particularly of water encroachment on reservoirs of this type."

Now, Mr. Olson, you are going to have to watch this, to be sure that you answer the question he asked you, and that the question, if he quotes your testimony—that then it is quoted correctly, because particularly it makes a lot of difference in my opinion, as the key word in that statement of this witness, which was not stated correctly to you.

Mr. Lewnes: We have handed the witness a copy of the transcript each time we referred to any particular statement of his. If I misquoted him, the witness is free to read directly out of that transcript and state exactly what he said.

Mr. Deakins: I agree with you. I didn't intend to say that you meant to mislead the witness. But I want the witness to be careful of this, because it may make a difference. I don't know.

Mr. Lewnes: Right.

By Mr. Lewnes:

Q. My question, Mr. Olson is: Have you seen any water encroachment in the reservoirs lately, or since you made that statement, for Rayne field now?

2405

A. I have not noticed any form of major water encroachment in any of the reservoirs, no.

Q. Well, is it not a fact that all producing wells on Rayne field are producing water? A. Could you state what wells you have in—

Q. I am talking about all the wells in Rayne field. A. It is possible they are producing a small amount of water.

Q. Well, isn't it a fact that they are currenty producing water at a greater ratio than they were producing in 1959? A. I would not know unless you could state the fact, please.

Q. Well, before we get to your work papers, I will refer you to transcript page 1824, and ask you if I have not—

Mr. Deakins: Do you have a copy?

The Witness: No.

By Mr. Lewnes:

Q. And I ask you if I have not properly quoted this, or you can change it if I have. A. All right.

Q. That Mr. Marshall, at that page, said in effect that

performations in Nodasaria unit 9 No. 1 will have to be raised in order to shut off water. Now isn't that a fact?

2406

A. Yes, that is correct.

Q. And my question was that the wells currently show an increase in the barrels of water produced, we will say per million cubic feet of gas, than they had previously, and I believe your answer was that you did not know that to be a fact, is that correct? A. I said that I didn't have the data in front of me here to show what increase has come about. Iam not saying that I did not know that there was an increase, but I do not have that data to show me how much there was.

Q. Well, we have taken the work papers that Texas Eastern submitted, and rather than hand you all of these work papers and let you go through the computation, let me read a couple instances in the record and you can check these through the work papers and see if that is correct.

Mr. Deakins: Mr. Lewnes, are you reading the staff summary of the work papers or from the work papers?

Mr. Lewnes: No. We have taken the work papers and from these work papers—as indicated on these work papers, they indicate what the water production per barrels per month for—we have used the period of May 1961 because we had all of the information for that period. Now we have taken that and compared it with the figures on the work papers, of the barrels per million cubic feet for the same month in 1960 and have come up with a ratio which indicates

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that the water production during May 1961 in relation to the volumes produced is much higher than the ratio of water produced in 1960, again in relation to the volumes of gas produced.

So what I just want to do is read a couple of these in the

record or as many as you like and the witness can check that and tell us whether we have been accurate or not.

Mr. Deakins: Well, I object to it, Mr. Examiner, if he doesn't read them all.

Mr. Lewnes: Well, we will read them all, then.

Presiding Examiner: Well, let's do it, then, after the morning recess.

Mr. Lewnes: O.K.

(Whereupon, at 11:30 o'clock a.m., a recess was taken until 11:40 o'clock a.m. on the same day.)

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Presiding Examiner: Are you ready, Mr. Lewnes?

Mr. Lewnes: Yes, Your Honor.

I should now like to read into the record the following figures, and these would be subject to check by the witness.

The first set of figures I would like to give——

Mr. Deakins: Mr. Examiner, can we go off the record a second?

(Discussion off the record.)

Mr. Lewnes: What I am going to read in is the water production per barrel per month, and this is for May 1960.

In other words, I am going to read in the number of barrels produced from the various units—for the various wells in the various reservoirs. And these figures are for the month of May 1960. I then shall read the water barrels produced for May 1961 from the very same units.

All right?

Now, beginning with the Nodasaria A reservoir.

Unit 1—and then I will give the production figure—390 barrels.

Unit 2, 330 barrels.

Unit 3, 341 barrels.

Unit 4, 377 barrels.

Unit 5, 420 barrels.
Unit 6, 300.
Unit 7, 558.

2409

Unit 8, 377.
And Unit 9, 2,001.
Mr. Deakins: The witness is looking at a document—"Gas Well Deliverability Document". We thought it had it on that. And he didn't get an opportunity to write that down, Mr. Lewnes.
Mr. Lewnes: Pardon me.
Mr. Deakins: He didn't get an opportunity to write those barrels down. Could you read those?
Mr. Lewnes: All right. Could I get off the record and I will read them back again?

(Discussion off the record.)

The Witness: Are these barrels per month? This is barrels per month?
Mr. Lewnes: That is right. And this is for the month of May, 1960.
The Witness: All right.
Mr. Lewnes: Now, we go to the Homeseekers D-2.
And for Unit 2, it shows zero water production during May 1960.
Now, continuing with the same date.
Homeseekers E, Unit 1, 690.
Unit 2, 279.
Unit 3, 270.
And Unit 4, 341.

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Northeast Fault Block.
Unit 1, 42.
Let me go to Homeseekers E.

Southeast Fault Block.

Unit 1, 3,950.

Homeseekers E, South Fault Block, Petitjean, 8.

Klumpp A—this is Quebodeaux Klumpp A. Unit 1, 20.

The Witness: How much was the Quebodeaux well again, please?

Mr. Lewnes: Pardon me?

The Witness: How many barrels did you announce on the Quebodeaux well?

Mr. Lewnes: 20.

Now Klumpp D. Edward Arceneaux Unit 2, 52.

We have Elton, Arceneaux Unit 1, 48.

W. Petitjean Unit 1, 121.

And finally, the W. Petitjean and Co., Unit 4, 136.

Now, I would like to give you the comparable figures for the same month, but for the year 1961.

Nodsaria A, Unit 1, 209.

Unit 2, 252.

Unit 3, 299.

Unit 4, 258.

Unit 5, 350.

Unit 6, 273.

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Unit 7, 280.

Unit 8, 486.

And Unit 9, 3,090.

Now, Homeseekers D-2 Unit 2, 240.

Homeseekers E, Unit 1, 338.

Unit 2, 1,000.

Unit 3, 676.

Unit 4, 234.

Northeast Fault Block, Unit 1, 480.

Now, Homeseekers E, Southeast Fault Block, Unit 1, 14,632.

For the Homeseekers E, South Fault Block, Marie Petitjean, nothing.

Now, for Klumpp A, Quebodeaux, Klumpp A, Unit 1, 186.

Klumpp D, Edward Arceneaux, Unit 2, 280.

Now, Elton Arceneaux, Unit 1, 248.

And the W. Petitjean, Unit 1, 84.

And W. Petitjean and Co., Unit 4, 48.

Now, if we take that water production and correlate to the gas production for the given periods for those units, it is the staff's statement, and you can check this, that the majority of the units have produced more water in 1961 than in 1960 in relation to gas production.

I guess we will have to leave it there until he gets a chance to check it.

2412

The Witness: Have you asked me a question now, or is this just a statement?

Mr. Lewnes: I made a statement, and you can check that, whether we are correct or not.

The Witness: Could you tell me how much more water did you come out with?

Mr. Deakins: You mean total?

The Witness: Yes.

Mr. Lewnes: Well, in other words, at times we have gotten perhaps twice as much water produced in 1961 than was produced in 1960. In the majority of cases we are getting more production of water now in relation to the volumes of gas produced than you were getting in 1960.

That is the crux of the question.

The Witness: But I mean where were you getting this twice as much water? I see in lots of cases here the actual water in '61 was less than '60.

Mr. Lewnes: Well, when you relate it, though, to the gas produced.

The Witness: (Nods.)

Presiding Examiner: I think he is talking about the percentage of water.

Mr. Lewnes: Yes, sir.

Mr. Deakins: Water as to gas.

Presiding Examiner: Yes.

2413

The Witness: Subject to check, I will.

Mr. Deakins: Why don't you just wait until you check it then, instead of giving him an answer that we will have to change?

Mr. Lewnes: Right.

By Mr. Lewnes:

Q. In your Exhibit X-2, page 2, what is the interstitial water which you have indicated for the Nodasaria A? A. I have used 14.9 percent.

Q. With that percentage, you nevertheless expect—strike that.

Now, if the interstitial water for the Nodasaria A is only 14.9 percent as you have indicated, wouldn't it be unlikely that the Nodasaria wells would produce water? A. Would you rephrase that question, please?

Q. Well, I will have the recorder repeat it, the question. Will you read the question?

Presiding Examiner: Will you read the question, Mr. Reporter?

(Question read.)

The Witness: The interstitial water has no bearing on your question at all.

By Mr. Lewnes:

Q. Well, what is this water that is being produced in the Nodasaria A presently?

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A. I can enlighten you on what that water is.

It is a fact that in these gases at these depths, that these gases contain fresh water vapor, and as the gas comes up through the tubing this water vapor condenses out of the gas and that is what the figures are that you have given me in the past here, of how much water is actually condensed out of the gas.

Q. Well, then, is that the reason then that Mr. Marshall at page 1824 says that perforation as in Nodasaria Unit 9 will have to be raised in order to shut off the water? Is that your understanding of the situation? A. You were previously referring to the Nodasaria A. Now, could you rephrase your question a little more clearly on what you are driving at now?

Q. Well, now, isn't Nodasaria Unit 9 in the Nodasaria? Now, Mr. Marshall has stated that perforations in Nodasaria Unit 9, No. 1, will have to be raised in order to shut off water, and I ask: Is the reason for these perforations which Mr. Marshall has given predicated on what you have testified as to what that water is that is being produced? A. Certainly part of that water that is shown in that particular well is this water vapor that I have stated.

However, it is possible that some of this water could be formation water. It is also possible that it was a poor cement job in the well. It is also possible the well might

2415

have a casing leak. It could be for various reasons. I don't know definitely why or where that water is probably coming from.

Q. But you can say definitely that none of that water is interstitial water? A. Interstitial water is not produced. It is retained in the reservoir.

Mr. Deakins: Well—I move to strike the answer as not responsive.

The Witness: Well, I would like to clarify, then, and say no, this is not interstitial water.

By Mr. Lewnes:

Q. Mr. Olson, in your Exhibit X-2, page 2, at line 5, you have used the term "estimated average thickness."

Could you define that? A. The estimated average thickness as I have used it here: That number is determined by dividing the number of acres into the number of acre feet, in that particular reservoir.

Q. Well, is the term "estimated average thickness" synonymous with net pay? A. Yes. The average thickness for any particular pay that you want to refer to here is the average thickness of the sand that I have found over the entire reservoir.

Q. Now, how do you determine this estimated average

thickness or net pay for a particular well, an individual well? And if you like, you can pick out an individual well to better explain your answer, if you would. A. I don't determine it by an individual well. I just told you how it was determined.

Q. Well, don't you get the net pay in a particular well in a particular reservoir before you determine what your net pay is for your entire reservoir? A. Yes, you have to, of course, determine the net pay in each well.

Q. All right.

Now, could you describe how you determine your net pay in a particular well which is later used to determine the net pay for the entire reservoir? A. I pick off my——well,

could you rephrase it and tell me just exactly what steps you want me or how you want to describe this, sir?

Q. In relation to what logs you use, et cetera. A. I use a combination of both the electric log and micro log, if available. Also take in consideration the core analyses. And from using all three of those sources I come up with the net pay for that particular well.

Q. All right.

Now—well, in relation to electric logs and micro logs, which do you prefer to use or do you use them interchangeably

or selectively? A. I use both logs if available on any particular well.

I found that in this particular field and for these particular reservoirs the micro log was a very good tool and a good check point for the electric log.

Q. Well, now, coming down to actually counting the feet of net pay in a well, do you count it on your micro log or your electric log? A. In the majority of the cases where I had micro logs, I used the micro log.

Q. Well, you said in the majority of cases. Could you give me an example when you would not use a micro log, if you had a micro available, and you might refer to the use of an electric log or something else? A. Well, it just depends on my own best judgment of how the log was run, and if it was run correctly and had the certain characteristics that I am familiar with, that would determine using one log over the other.

Q. Now, are you the same Mr.——oh.

One previous question. Is the term "net thickness" synonymous with the term "net pay"? A. In this particular case the estimated average thickness that I have used in Exhibit X-2, on page 1, has been determined from the net pay that I have found in the

various logs.

Q. Well, I mean, in a general sense used in the trade by geologist, when a geologist uses the term "net thickness" he uses it interchangeably with net pay. That is, you might call it net pay or net thickness, but he is talking about the same thing generally?

Mr. Deakins: That is objected to as immaterial. The question is what this man used and not what is used in industry.

Mr. Lewnes: I believe the witness is a geologist, well versed in the terminology of the industry.

Mr. Deakins: I have no objection——

Mr. Lewnes: I can rephrase it.

By Mr. Lewnes:

Q. You have testified that when you use net thickness you use it interchangeably with the term "net pay"? A. Most generally, I do, yes.

Q. Now, are you the same E. A. Olson who testified in Docket No. G-11024 in 1960, which has been referred to as the CATCO case? A. Yes, I am.

Q. Now, I ask you if this is a proper quotation from your testimony in that proceeding as it appears on transcript page RE-1242. And as soon as I read it I will hand you a copy of it to check it. You state: "The reason I say that,

Mr. Geneau, is that anybody that has a degree in energy" —and I believe that was changed by transcript correction, changed to "engineering."—"or geology is taught how to read an electric log, and I believe most anybody that has had experience and has worked with electric logs should read the log the same way."

Mr. Deakins: I object to just reading the quote, because it is out of context. It isn't the whole quote of an answer to a question that was propounded to this witness.

Proper cross-examination would indicate that the witness be advised of the question, plus the full answer.

Presiding Examiner: Well, the witness has the transcript in front of him now and he may—he is refreshing his memory from the full context of what the question was and his answer was.

Mr. Deakins: That is right.

Presiding Examiner: To that.

Mr. Deakins: I didn't want to be coaching this witness. I just wanted to be sure he knows what is before him.

Presiding Examiner: Well, I gather from his demeanor on the witness stand he is not unfamiliar with testifying before the Federal Power Commission at least.

Mr. Deakins: No, he has been here before.

Unfortunately, I have never seen this Tennessee transcript before. I have no idea of what is in it.

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Presiding Examiner: I have not seen them, either.

Are you ready, Mr. Olson?

The Witness: Yes.

Presiding Examiner: The witness is ready to answer.

By Mr. Lewnes:

Q. Did I properly quote you, Mr. Olson? A. Yes, as far as the quote was concerned.

Q. Well, is there anything you would like to add to that quote? A. Well, as any answer is given about anything, I would just like to say, as Mr. Deakins has pointed out, a lot of it would refer to exactly what the question was and what they were driving at what point they were trying to get across at that particular time.

Q. Well, so there won't be any misconstruction, would you care to read the question and the entire answer into the record? A. Well, I would have to start at the top of the page. Wait a minute, now.

Starting with the question by Mr. Geneau:

"Am I not correct, Mr. Olson, that whether uses core analyses or electric log's with respect to, say, determination of porosity, permeability and interstitial water content, perhaps among other things that a great deal of judgment enters into the determination of these elements on the

part of the person making the estimate?"

The answer: "That is correct, and I have been working in this area for some 15, 16 years and have determined through that time interval just what source, that is the best to rely on, whether it be the electric log or the core analyses, and also having studied the field throughout this whole general area, it gives one advantage that he worked in an area this long to place judgment on some of these factors."

Question: "Now, this judgment element or factor also enters in with respect to determination of the structure and net pay, too, does it not?"

Answer: "I think we are getting a little bit vague on what he means now by judgment. The reason I say that, Mr. Geneau, is that anybody that has a degree in engineering or geology is taught how to read an electric log and I believe most anybody that has had experience and has worked with electric logs should read the log the same way."

Now, that has somewhat of a broad meaning.

Mr. Lewnes: Thank you.

By Mr. Lewnes:

Q. Now, Mr. Olson, I should like to read certain figures here again as appearing on the work papers submitted to the staff and ask you if this is not a proper summary—actually it is not even a summary. Actually they are figures

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taken off the work papers and summarized in our own tabulation. And I ask you if these figures are not correct figures as appearing on the work papers submitted to the staff. A. Now, could you—excuse me a minute. These work papers are my work papers, do I understand, or somebody else's or what?

Q. Well, you have testified that in arriving at your reserves here you used all available material given to you both from the Continental and some material you got from Louisiana and some you got from Texas Eastern and some material you got from your own files. A. All right.

Q. Now, what I am reading from is from the material that was submitted to the staff which we were told was part of the background upon which you made your calculations here.

Mr. Deakins: Did he submit this, Mr. Lewnes?

Mr. Lewnes: Texas Eastern submitted all this. This witness submitted his own work papers, these work papers, a part of the overall work papers, which this witness said he had available to him which he apparently looked at and made certain determinations as to what the ultimate reserves were here.

Mr. Deakins: Well, could you state what those are? Because there is nothing here that shows that the witness actually did look at all these. I don't know.

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Mr. Lewnes: Well, the witness— I believe the testimony in this proceeding has been, and the witness has verified that just now——

Mr. Deakins: As you said, that is right.

Mr. Lewnes: Yes. I am going to identify those papers.

Mr. Deakins: O.K.

Mr. Lewnes: Now, what I am going to read off, or at

least where I have taken this information from, has been from Mr. Olson's work papers and from the Continental Oil Company, new well completion data, submitted to us by Texas Eastern as part of the overall work papers upon which this reserve was predicated.

Mr. Deakins: Have you seen those, Mr. Olson? What he just referred to.

The Witness: I believe I have, yes, sir.

Mr. Deakins: O.K.

Mr. Lewnes: Now, I am going to refer to the specific reservoirs and the wells there, and then I am going to give the net thickness which you have used, Mr. Olson, and the net thicknesses appearing on Continental Oil's papers that I have just referred to.

And you can check this and state whether this is not correct.

Now, beginning with the Nodasaria A, the W. Petitjean Well No. 2, your work papers show a net thickness of 86,

whereas Continental's shows 97. This is 86 feet and 97 feet.

Mr. Deakins: Just a minute now. Was that No. 2?

Mr. Lewnes: No. 2, well 2.

Mr. Deakins: Now, Nodasaria A.

Mr. Lewnes: Nodasaria A. I say Olson's net thickness, 86 feet, and Continental's, 97 feet.

T. G. Petitjean, Well No. 1, Olson's, 102 feet, Continental's, 85 feet.

G. Mouton, Well 1, Olson's, 105 feet and Continental's, 86 feet.

A. R. Branchard, Well 1, Olson's, 87 feet and Continental's, 69 feet.

D. Cormier, Well No. 2, Olson's, nothing, and Continental, 34.

E. Dupuis, Well No. 1, Olson's, 69, Continental's 62.

C. Dugas, Well No. 1, Olson's, 140, Continental, 109.

L. Cormier, No. 1, Olson's, 84, Continental's, zero.

Mr. Deakins: Mr. Lewnes what was the Dugas well number?

Mr. Lewnes: One.

Mr. Deakins: The one just before that.

Mr. Lewnes: One.

Mr. Deakins: I am sorry to interrupt you.

Mr. Lewnes: O.K.

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R. E. Babmeaux, No. 1, Olson, 41, Continental, 38.

Now, we go to the Homeseekers E. That is the Homeseekers E reservoir.

J. S. Arceneaux, Sr., No. 1, Olson's, 134, and Continental's, 121.

D. Cormier, No. 1, Olson, 52, Continental, 44.

T. G. Petitjean, No. 2: Olson, 114, Continental's, 106.

W. Petitjean 3, Olson, 96, Continental, 86.

Ed Arceneaux, No. 1, Olson, 118, and Continental, zero.

When I say zero, it doesn't mean they have indicated zero. It means that we just have that before us. We haven't been given that figure. In other words, when I refer to zero, it means we just don't know what they are using.

Now, we don't have any for T. A. Mache No. 1, and we don't have any for the M. Petitjean No. 1, which Mr. Olson has indicated in his work papers is faulted.

Mr. Deakins: You mean you don't have any for either Olson or Continental?

Mr. Lewnes: That is right.

Now, we go to the Homeseekers D-2 reservoir. And the E. Navarro, No. 1—we don't have anything for either Olson or Continental.

Perhaps what I should do is just go down and give the ones we can make a comparison, because the others aren't

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available.

We go down to the Klumpp D, W. Petitjean No. 1—I am sorry, strike that. We don't have a comparison there.

We go down under the Klumpp D to the Elton Arceneaux No. 1, Olson is 39 and Continental is 38.

There is one other one here. I will have to qualify it.

Under the Homeseekers D-2, the M. Navarro, 1-A: Mr. Olson's papers indicate 27 feet of net thickness with a question mark.

I am sorry, you forget about that question mark. We have a comparison. Mr. Olson shows 27 whereas Continental shows 30.

That is the total figures. And the only thing we are asking of this witness: If it is not a fact that these are correct figures as shown on the work papers submitted to the staff.

Mr. Deakins: Do you mean——I object to that, Mr. Examiner. That is an indirect way of getting in an estimate of Continental that is not subject to cross-examination, not under oath, and not made in this hearing room.

Mr. Lewnes: Mr.——

Mr. Deakins: Now, you see what I mean? He says yes, that is correct. Then it goes in there as an estimate by Continental, which isn't the same as his. If we want to

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strike this out, I can sure do that.

Presiding Examiner: What I understood Mr. Olson to say was that he had Continental's work papers—

Mr. Deakins: Available.

Presiding Examiner: Yes.

Mr. Deakins: That is right.

Presiding Examiner: At the time. And any other data pertaining to these various departments.

Mr. Deakins: That is right.

Presiding Examiner: When he made his estimate or got up this estimated average thickness here on his exhibit X-2

Mr. Deakins: That is right.

But, Mr. Examiner, if that goes in, then I have to go back and prove he didn't rely on it. The burden of proof is on somebody else.

Presiding Examiner: He indicates that he——

Mr. Deakins: He didn't rely on. He said he had them.

Presiding Examiner: He had it available to him.

Mr. Deakins: All right. But then that proves an estimate that is not supported.

Now, I don't think the Examiner will rely on it. But I have been in a lot of these administrative proceedings, particularly before the Labor Board, and you get caught with a lot of things that you wish you would never let get in at all. And I kind of hold a tight rein on all my witnesses

and also on the other side, if the Examiner will note that.

Presiding Examiner: The witness will have had an opportunity to examine these work papers to which staff counsel have referred. Before we get to the redirect you can straighten it out there to suit your convenience.

Mr. Deakins: I will do that over the noon hour, Mr. Examiner.

By Mr. Lewnes:

Q. Mr. Olson, all factors remaining constant again—this is somewhat similar to a couple of questions I have given you previously. If you use a lower net sand thickness, and again all factors remaining constant, you ultimately would arrive at a lower reserve estimate, isn't that correct?

Mr. Deakins: Now, that takes into consideration porosity, permeability and everything?

By Mr. Lewnes:

Q. Keeping all those things in mind. In other words, if you make up a reserve estimate and leave the reserve estimate exactly the way it is, you have a final reserve figure. Now, if you just change the net sand thicknesses which you used in this reserve estimate, lower, that is, from the ones you have, will that not result in a return estimate lower than what you have indicated?

Mr. Deakins: Mr. Examiner, I object to that because

the question will have no probative value. And I will explain to you how.

On this diagram that was put on the board yesterday, where they had a thing that looked into a couple markup here, they showed this water down here. Now, what are you going to take the 10 feet off of or the least amount off of? Off the top or off of the bottom?

If it is off the bottom, this witness said this morning if that were included there might be five percent more gas in these reservoirs. If you take it off the top, you may be taking the best part of it off.

Obviously, as the staff has been trying to prove this morning, there is some shale in one of these reservoirs, a little bit, or else the core samples didn't come out properly.

Are you going to take that 10 feet out? If you do—that is why I saw it has no probative value.

Mr. Lewnes: Mr. Examiner, this is a theoretical question. Irrespective of whether you take the 10 off the top, the bottom or the middle, is it not a fact that the reserve estimate will ultimately be lower? It is a theoretical question. This witness can certainly answer it.

Presiding Examiner: I gather what he says is that everything else being exactly the same, the testimony of all the conditions up to now being exactly the same, if in

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place of having 10 feet of pay sand you have only got 8, would that reduce your reserve estimate by two-fifths?

Mr. Deakins: Mr. Examiner, if I were the witness and was on my toes, I would take that reservoir that he has talked about this morning and exclude the shale and say it is the same and cut him up.

Now, that is why the question has no probative value.

Mr. Lewnes: Mr. Examiner, I submit that remarks of counsel are definitely leading and perhaps we shouldn't have the witness answer it. I think it is obvious and we certainly wouldn't want to have the witness now answer in accordance with the testimony of the counsel.

Mr. Deakins: I didn't testify, Mr. Examiner. But that is where I am trying to point out to the Examiner that the question is no good.

Presiding Examiner: Well, what I gather is now staff counsel says he doesn't care whether the answer answers or not.

Mr. Lewnes: That is correct.

Presiding Examiner: Have you another question?

Mr. Deakins: Mr. Examiner, I didn't intend to lead the witness. I just said what I would say if I were the witness.

Mr. Lewnes: If that is not leading the witness.

Presiding Examiner: Well, let me say this. It isn't

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like trying a law suit to somebody who is unfamiliar with the subject matter.

Mr. Deakins: No, sir. We have been through this thing two or three times before you. No.

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Presiding Examiner: Well, I have been around it 60 years.

Mr. Deakins: That is right.

Presiding Examiner: So I am on speaking terms with it at least.

Mr. Deakins: I am sure of that.

By Mr. Lewnes:

Q. Mr. Olson, do you have the micro logs for Quebodeaux No. 1? A. No, I do not.

Q. I shouldn't say the logs, I am sorry.

I will now hand you some logs and ask you if they are not the logs for the Quebodeaux No. 1, with specific reference to the Klumpp D. sand? A. Yes, these are the logs for that particular well.

Q. Now, would you give us the top and bottom of the sand as you have picked it? A. The top of the sand as I have picked it as at 11,279 feet.

I would pick the bottom of that sand at approximately 11,317 feet.

Q. Is there a gas-water contact at that bottom depth? Rather—strike that.

Is there a gas-water contact?

A. There appears to be a gas-water contact present in this well.

Q. At what depth? A. The gas-water contract that was used for this particular reservoir was estimated at 11,308 feet.

Q. Well, where is the gas-water contact at that well? A. I would say it is within that vicinity that I mentioned.

Q. Well, isn't it a fact that your work papers show the gas-water contact for that well at 11,300? A. It is possible that I have put that down in my work papers, yes.

Q. Well, will you refer to your work papers and state if that is not a definite fact? A. I do have that note here. I just noticed that.

Q. And it is at 11,300? A. That is correct.

Q. Now what is the net pay that you have used for this interval? A. I used 21 feet.

Q. And what log did you get that off of?

A. I am not positive which log I actually got it off of. I probably, as I said previously, used the micro log in connection with the electric log.

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Q. All right.

Will you look at the micro log for that same interval? A. I have it in front of me.

Q. Isn't it a fact that that micro log shows non-permeable zones in that interval? A. Could you indicate where you mean, what part of that log you mean where the non-permeable zones?

Q. May I have the log, please?

Mr. Olson, a specific reference now to the interval between 11,280 and 11,286, and in the interval between 11,296 and 11,300, is it not a fact that that micro log indicates non-permeable zones within those designated footages? A. I can't say exactly the reason for the micro log not indicating the entire sections to be porous. In my best judgment, looking at this particular reservoir, due to the clear characteristics of the self potential curve here, I assumed it to be all pay.

Q. Well, now, you assumed it to be all pay. But isn't it a fact, if you read the micro log alone, standing alone, that that does show between those intervals non-permeable zones?

Mr. Deakins: Mr. Examiner,——

The Witness: Mr.——

Mr. Deakins: Just a minute. The witness did not say

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he relied on that alone.

Mr. Flaningam: That isn't the question.

Mr. Lewnes: That is not the question.

Presiding Examiner: The witness may answer.

Mr. Deakins: I am sorry.

Presiding Examiner: Do you want the question read?

The Witness: Yes, I believe so.

Mr. Deakins: I thought it was changed by that other statement.

Presiding Examiner: Will you read the question, Mr. Reporter?

(Question read.)

Mr. Deakins: Now if you will read the answer just immediately preceding that, the Examiner will see what I mean.

Mr. Flaningam: But he didn't answer the question.

Presiding Examiner: Well, he said before that that he assumed it all to be pay.

Mr. Deakins: He said when he looked at this other log—

Presiding Examiner: Yes?

Mr. Deakins: That he assumed it all to be pay.

Presiding Examiner: Assumed it all to be pay?

Mr. Deakins: That is right. What I thought he testified is that he looked at something else or used something

else. I just didn't want the record to get off the track, Mr. Examiner.

Mr. Lewnes: The question pending, Your Honor, is that if you take the micro log and look at it alone—if Mr. Olson would pick up that micro log and look at it, isn't it a fact that by looking at that micro log it shows non-permeable zones within the designated footages that I have given to him.

The Witness: If you were to look at the micro log by itself, it is true that there is a small degree of characteristics on this micro log that indicates it not to be porous.

However, to elaborate on it, again, I have to say that my reason for getting the 21 feet to begin with—because I had

to use both logs, and also you have to base this judgment factor that I have been expressing from time to time.

By Mr. Lewnes:

Q. Then, in effect, you used the electric log for this particular—for determining net sand thicknesses for this particular well? A. I used the combination of both, yes.

Q. Well, now, you mentioned porosity in relation to the micro logs.

Now, what is the purpose of the use of that—all right,

what is the purpose and use of the micro log? A. Well, one of the main purposes of the micro log is to determine your porous sections in your sand.

Q. So isn't it a fact that the micro log has been developed primarily as a means for the accurate determination of permeable beds, where the SP log alone does not give a satisfactory answer? A. Here, again, you have to take into consideration how the log might have been run, whether some mechanical phase of it at the time might have changed the needle that makes the lines. You have to assume all this particular judgment in using a log. You just can't exactly use it on its face value all of the time, no.

Q. In other words, what you are saying is that some of these logs that you have had here aren't accurate and can't be relied upon? A. No, I am not saying that they can't be relied upon. I am just saying that you have to use your judgment and your knowledge when you are using a log.

Q. Just get back to this specific log, isn't it a fact that if you eliminated even the small degree, as you have put it, of impermeable beds shown on the micro log—if you had eliminated those from your reading of the electric log, you would come up with a net pay smaller than that which you have used for this well?

A. I did not eliminate any of the pay, so I will not state what it would be. I assumed it to be 21 feet. That is what I used.

Q. You calculated all, notwithstanding the facts as you have now indicated the micro log did indicate some impermeable beds? A. I believe that question has already been answered.

Q. I think we have one final question. Getting back to the recovery factor, Mr. Olson, isn't it a fact that in any presentation that you have made before this Commission on reserves other than a presentation for Texas Eastern, you have not used a recovery factor as high as 93 per cent in any of your reserve studies? That is again exclusive of any reserve study submitted on behalf of or for an application that Texas Eastern has filed?

Mr. Deakins: I object to the question, Mr. Examiner, as not proper and not correctly reflecting the witness's testimony. The witness when he came back this morning you will recall testified that he did not use any 93 per cent recovery factor, that he used an abandonment pressure. If he wants to ask about an abandonment pressure I have no objection to that. And that is the fact.

By Mr. Lewnes:

Q. Well, isn't it a fact, Mr. Olson, that from your testimony and exhibits here, you indicate that you will

recover approximately 93 per cent of your gas in place? Isn't that a correct statement? A. I haven't checked it out. Could you tell me how you arrived at that figure?

Q. Are you stating that you don't know how to calculate what percentage recovery factor——A. No, I am not stating that. I am asking you how you got it.

Q. What is your percentage recovery factor of the initial gas in place which you have indicated on your exhibit? A. I did not use a recovery factor in my exhibit. I used an abandonment pressure of 515 pounds.

Q. All right. We are going to have to go through this tediously. Let's go to Exhibit X-2, page 2, lines 16 and 18, under total column "m."

Now if you divide line 18 by line 16, don't we come up with a 93 per cent recovery? A. If you are asking me to divide those two figures, I would come up with approximately 92.4 per cent.

Q. Now my question is: In any of your other reserve studies submitted before this Commission in any proceeding not involving Texas Eastern, do you show a recovery factor as high as 92.4 per cent which you have just attested to?

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Mr. Deakins: Now, Mr. Examiner, I object again to the question because it doesn't assume the same pressure base. If it did, then you are comparing apples with apples. Otherwise you are comparing apples with oranges. If you say 1,000 pound—if he testified to 1,000 pound abandonment pressures in other cases and 500 here, that would make a lot of difference in the percentage. It is just something to clutter up the record with. It doesn't prove anything.

Presiding Examiner: As I understand his supplemental testimony this morning, Mr. Lewnes, he said that he used an abandonment pressure of 500 pounds to arrive at the estimated recoverable gas that is shown there on line 18.

Mr. Lewnes: We won't pursue this any further. We have no further questions at this time. Thank you.

Presiding Examiner: We will take a noon recess at this time.

(Whereupon, at 12:37 o'clock p.m., a noon recess was taken, to reconvene at 2:00 o'clock p.m.)

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AFTERNOON SESSION

E. A. Olson

resumed the witness stand and testified further as follows:

Presiding Examiner: Mr. Lewnes, did you have any more witnesses, or have any more questions of this witness?

Mr. Lewnes: No, Your Honor. We concluded our cross examination. Thank you.

Presiding Examiner: He is your witness, then, Mr. Flaningam.

Mr. Flaningam: Thank you. I have a few questions.

FURTHER CROSS EXAMINATION

By Mr. Flaningam:

Q. Mr. Olson, you have testified that the Homeseekers D. 4 sand has not been tested, isn't that correct? A. That is correct, yes.

Q. Isn't it a fact, however, that this sand was tested in the Navarro A. 1 well, and that this test resulted in salt water production? You know the well to which I am referring, do you not? A. I know the well to which you are referring, yes.

I would like to ask you at this time, before I answer your question, at what interval was that particular test made.

Q. Well, I don't think it is material to answering

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a question as to whether or not there has been a test in the interval.

Now hasn't this sand been tested in this well? That is my question. A. I believe there has been a test in this well, yes.

Q. And it tested salt water, didn't it? A. If the test had been made in the water part of the sand, it probably would have tested salt water.

I have got to know in the interval that you are talking about.

Q. Well, you are not familiar, Mr. Olson, with what tests were made in that well? A. I am familiar, or it seems to come to my mind, there was a test made on this well, but I don't remember that the interval that was made at this time.

Q. It was made in this sand—Homeseekers D. 4 sand, that is right, isn't it? A. I say that I am familiar that a test was made in the Homeseekers D. 4 sand.

Q. But you don't know what the results were, or what the interval was? A. I can't remember the interval that it was tested or the actual results of the test.

Q. And I would assume—I suppose it is rather

elementary, isn't it, Mr. Olson, that the test that was made was with a view that the sand was productive in the interval where the test was made? Wouldn't you assume that that was so, that that was the objective and the theory on which the test was made A. Most generally that is why a test is made, to determine what the sand—the content of the sand.

Q. We could just agree that when they make these tests, initial drilling of wells, that that is why they are testing, isn't it? It is on the theory they think the particular sand, or at interval where they make the test, is productive? A. That is right, yes.

Q. Now during your testimony, I think both on direct and cross examination, there has been reference made to your use of the irreducible water factor as your connate water factor or interstitial water factor that you have used in your reserve calculations, reflected in Exhibit X-2? A. Could I have that question reread, please?

Presiding Examiner: Reread the question, Mr. Reporter.

Mr. Flaningam: I can restate it. Just strike it and let me try it again.

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By Mr. Flaningam:

Q. During the course of your testimony with respect to Exhibit X-4, you have indicated that you have used for your interstitial water factor or connate water factor what you have termed what is known as the irreducible water factor of certain sands involved in your study? A. In certain of the sands, yes.

Mr. Deakins: Mr. Flaningam, you said Exhibit X-4. I don't think this witness had anything to do with X-4.

Mr. Flaningam: If I said X-4, I was mistaken. If the Reporter will correct it to X-2.

Mr. Deakins: X-2.

Mr. Flaningam: Thank you, Mr. Deakins.

By Mr. Flaningam:

Q. You would use the irreducible water factor for interstitial water content of a reservoir, would you not, only under optimum conditions? A. I don't quite understand your question, Mr. Flaningam.

Q. Well, let me see if I can make it somewhat more clearer. By using the irreducible water factor for your interstitial water content of a reservoir, as a general proposition, the effect on the reserves which you would calculate would be to derive the greatest possible reserve for a

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particular reservoir, would it not, so far as you take into consideration the water saturation of the sand involved? A. Well, if I understand your question, where I have the material available, such as I have expressed before on this irreducible water—and I considered the material relevant to this reserve—I would definitely use that material to the best of my advantage.

Q. Maybe I can approach it—— A. Or to the best advan-

tage of the reserve estimate, let's say, in arriving at the best estimate I could probably arrive at.

Q. You would certainly not use in any reserve study a connate water or interstitial water content factor that would be lower than the irreducible water factor as you have used the term in your testimony? That is right, isn't it? A. The factor that I would use, to begin with, would again have to be related to the material that I have available.

Q. Well, now, I understand that, and I think we all do. Now I am trying to get the thing on the table in pure theory, of calculating reserves, and I am directing my attention particularly to the water factor, the connate water factor that you would use. In no study, in no reserve calculation, would you use a factor that is lower than the

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irreducible factor calculated for the particular sand involved, would you? A. That is correct.

Q. So what you have done: You have used the lowest possible water factor that could theoretically be used in calculating the reserves in your study reflected in Exhibit X-2? A. No, that is not right.

Q. Insofar as water, I am saying. A. I have used the interstitial water per cent that I found to be the proper per cent to use with the available material that I had.

Q. Well,—— A. I mean this is the one that you use.

Q. Yes, but in certain sands and reservoirs, you have used the irreducible water factor as constituting the interstitial or connate water factor. That is correct, isn't it? A. Well, it is more or less one of the same things when you come right down to it.

Q. Well, have you finished your answer? A. Yes, sir.

Q. Maybe we better just—I don't like to spend so much time on this, but I certainly am becoming confused by your recent answer.

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Mr. Deakins: That was his answer to the question by the staff, Mr. Flaningam.

Mr. Lewnes: Excuse me. I think when he defined interstitial and irreducible water, he didn't define them as being one and the same. And it seems that his answer now is that they are the same.

Mr. Deakins: I thought he said this morning practically the same.

The Witness: I said they are closely related.

Mr. Flaningam: Well, I may have misunderstood the purport of your testimony.

Let me see if I can try to summarize this matter in the interest of expediting this examination.

By Mr. Flaningam:

Q. As I have understood your testimony, and particularly in response to certain of my questions, you have stated that the irreducible water factor as a general proposition represents the lowest water factor that could properly be used in any reserve study at any time. Now that is correct, isn't it? A. That is right, yes, sir.

Q. Now I have also understood that in this study of yours reflected in Exhibit X-2, you have with respect to several of the reservoirs used for the connate or interstitial water factor of the particular reservoirs factors

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that are exactly equivalent to the irreducible water factor applicable to those reservoirs, that is right, isn't it? A. That is correct, yes, sir.

Q. Then it follows—and possibly there is a question—this is the one question too many, Mr. Examiner, but does it not follow, Mr. Olson, that where you have used the irreducible water factor the result of that has been to use a factor that

would result in the largest reserve estimate possible so far as the water factor enters into reserve calculations? A. Yes.

Q. It necessarily follows, does it not, that you would use such factors under the assumptions that the most optimum conditions are anticipated in the reservoirs involved and in the subsequent production of the gas from such reservoirs? A. That is entirely possible, yes, sir.

Q. May I ask: Isn't it unusual to use in a reserve calculation the irreducible water factor for your connate or interstitial water content factor? A. No, I would not say it is unusual.

Q. Well, would you say, on the other hand, or the other side of that coin, Mr. Olson, that it is a common practice among engineers in your field, in estimating reserves in fields involving sands and reservoirs of the character involved in the Rayne field, to use the irreducible

water factor for your connate water factor in such calculations? A. I would like to have that reread back, please.

Presiding Examiner: Will you read the question, Mr. Reporter?

(Question read.)

Mr. Deakins: I object to that question. No foundation laid.

Mr. Flaningam: Your Honor, I think it is a perfectly proper question in the circumstances.

Presiding Examiner: The witness said that interstitial and connate water was one and the same, and irreducible water was closely related to the two, and in the instance or the illustration here that was just used he used the same figure, the same percentage, that he found for irreducible or connate—interstitial or connate, and irreducible.

The witness may answer.

The Witness: I can only speak for myself here, that I would use it.

Now I presume other people would use it also.

By Mr. Flaningam:

Q. Your answer, then, to my question is that you do not have knowledge as to whether or not what you have done in this regard is a common practice for estimating

2450

reserves in reservoirs and sands of the character involved in the study reflected in Exhibit X-2? A. It may very well be. I don't have any particular knowledge in what you people might do.

Mr. Deakins: Mr. Examiner, that was the basis of my foundation objection right there. If he had asked him that question he would have gotten that answer and here we would be at this point already.

Presiding Examiner: We would be one question further down the road, wouldn't we?

Mr. Deakins: That is right.

By Mr. Flaningam:

Q. Mr. Olson, let's assume we have taken a core from the sand that is 100 per cent water wet or 100 per cent water saturated. Will you state what the interstitial water factor would be? A. That would be 100 per cent in that case.

Q. Would the irreducible water factor be the same? A. No. The way the irreducible water is determined, it would not.

Q. Mr. Olson, at transcript 1814, you mentioned that the reservoir pressures in the Rayne field are abnormally high. Do you have that reference? A. One moment, please.

Q. I believe it is at lines 22 and 23.

2451

A. I have it now, yes, sir.

Q. That isn't true for all the reservoirs, is it, Mr. Olson, in this field? A. It is true for all of the reservoirs with the exception of the Klumpp A. sand.

Q. Would you say that that Klumpp A. sand has a normal pressure gradient? A. I would say that it is possibly approaching the normal pressure gradient, yes.

Q. Thank you.

Will you please refer to your map exhibits or the maps in your Exhibit X-2? Do you have those before you? A. Yes.

Q. Certain lines on those maps are labeled and as I understand purport to indicate the productive limits of the respective sands referred to? A. Yes.

Q. Isn't that correct? A. Yes.

Q. I believe there was some mention made of this yesterday by you, that there is not portrayed or depicted upon these maps certain fault block lines, isn't that correct? A. No. Certain of these lines represent actually the limit of the reservoir due to the fault trace.

2452

Q. Well the thread of the point that I wanted to develop and make clear on the record—and I don't think it should be any particular exercise here.

Let's refer to the tabulation, the first tabulation which is included in your Exhibit X-2. Apparently that is referred to as page 1 of the exhibit. It is not numbered. A. Yes, right.

Q. Now, in that tabulation you have certain column headings with the various sand designations indicated? A. Yes.

Q. I would infer from looking at the exhibit and by reference to those column that you have eight different sands or reservoirs there. Wouldn't that be a natural inference, in the way the exhibit is set up? A. No. I have really—did you say sands or reservoirs?

Mr. Deakins: That is what he said.

Mr. Flaningam: I said sands or reservoirs.

The Witness: Well, just to further make myself clear on it, we are talking about seven different reservoirs in the field, with one of them that we have broken up into two segments.

By Mr. Flaningam:

Q. Isn't it a fact that, for example, the Klumpp D.

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sand as well as the Klumpp E. sand as designated on page 1 of Exhibit X-2 reflects data for two reservoirs in each instance, or a total of four reservoirs? Is the question clear? A. No, I don't quite see what you are driving at, Mr. Flaningam.

Q. Well, now—strike that last—you can leave it or strike it if you want to. The question wasn't answered.

Let's refer to the Klumpp D. sand. Isn't it a fact that there is a fault within the limits shown and therefore you really have two reservoirs within your designation here of the Klumpp D. sand? A. As we are considering it in this exhibit, we are assuming one reservoir.

Q. I know, but the fact are—your underlying work papers reveal that there is a fault, and you actually have two reservoirs? A. Would you give me a moment, please, to check my map?

Q. Certainly. A. That is correct. We are considering it of course as one reservoir and it does have two faults, different fault segments in it.

Q. Isn't that also true with respect to the Klumpp E. sand?

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A. Yes, it is.

Q: And isn't it true with respect to the Homeseekers E. sand, that you have three reservoirs by reason of these

fault blocks? A. That is correct, yes—three separate fault blocks.

Q. Then if I understand the facts as we have developed them in respect to these reservoirs—for example, in the three reservoirs in the Homeseekers E. sand as you have designated on page 1 of Exhibit X-2, you would have to have at least three wells, I mean one well in each of these reservoirs, to drain the Homeseekers E. sand, for example, isn't that true? A. That is correct.

Q. Then likewise I think it follows you would have to have at least two wells, one in each reservoir, for the two reservoirs in the Klumpp D. sand and the two reservoirs in the Klumpp E. sand? A. That would be the normal procedure the operator would use to drain the reserves from that reservoir, yes.

Q. Thank you.

So your page 1 of Exhibit X-2 you have indicated on line 11 what you have designated as terminal reservoir pressure, have you not? A. Yes.

2455

Q. And I believe in each instance you have shown that or estimated that to be 515 pounds? A. Yes.

Q. Now, it is probably elementary, but I wonder if you would briefly define what you mean by terminal reservoir pressure? A. That is the pressure that is the pressure that we expect the reservoir to be at at abandonment conditions.

Q. Then at that pressure, assumed abandonment pressure for these respective reservoirs involved in this field, you assume that all of the gas reserves which you have estimated in Exhibit X-2 would have been drained? A. That is correct.

Q. And that the reservoirs themselves would actually be drained of all gas in the reservoirs? A. No, they would not be drained of all gas. There would still be a certain

amount of gas remaining in the reservoir at that particular pressure.

Q. You wouldn't expect to be able to produce that remaining gas or gas remaining in the reservoir at your assumed abandonment pressure?

Mr. Deakins: You mean—I object to the question as not clear. You are talking about the gas that would reduce the terminal pressure to below 515 pounds?

2456

Mr. Flaningam: The gas that the witness assumed would be in the reservoir at the time the reservoirs had been produced to the point that the pressures therein would approximate 515 pounds.

Mr. Deakins: O. K.

The Witness: We had not assumed that in this exhibit. However, it could be entirely possible that you might be able to produce some of these reservoirs down to 400 pounds.

By Mr. Flaningam:

Q. In arriving at your estimate of terminal reservoir pressures which you have used in your study, did you consider any water production from the Rayne field sands in determining such pressures? A. We assumed due to the pressures and characteristics of this field that the reserves would be drained by the pressure decline or pressure depletion method.

Q. Would you say that you should qualify that last answer to add thereto the phrase "with the exception of the Klumpp A. sand," which you have earlier indicated has what we have referred to as a normal pressure? A. The fact that it is a normal pressure does not necessarily mean that it also can't be or will not produce down as the pressure depletion type reservior.

Q. Well, is the answer to my question "Yes" or

2457

"No"? A. I included—for my statement, I have included my entire reserve basis.

2458

Q. You said, Mr. Olson, as I understand it, that because of the abnormally high pressure in the reservoirs other than the one sand we mentioned, that you will have pressure depletion in these reservoirs, did you not? A. That is correct, yes, sir.

Q. Well if I understand your testimony in regard to the abnormal pressures in the certain sands and the normal pressure in the other, then you really don't know whether it will be pressure drive or water drive in these reservoirs? A. To mak my answer a little more clear on this subject, I might say that for the experience and what we have observed with reservoirs in south Louisiana, as to our abnormally pressured, that in the cases that can be observed at the present time that have had a certain amount of production taken out of them, that the pressure depletion method is what you would normally expect. I can't say definitely that the Klumpp A will react in the same way. There is nothing that is going to tell me at this moment to say that it will not or that it won't—it will or will not act the same way. I can't say because we have no history on the reservoir. It is entirely possible it might have some water drive in connection with the pressure drop.

Q. May I refer you to your testimony on transcript, page 2319, lines 4 through 7. That is yesterday's transcript.

2459

A. I have it here, yes, sir.

Q. You have indicated there, have you not, that there are only two reservoir drive mechanisms, have you not,

namely water drive and pressure depletion? A. Yes. I could have further expanded on that answer by saying you could have the combination of both.

Q. Mr. Olson, let me ask you again, did you consider any water production from the Rayne field sands in determining your terminal reservoir pressures? A. No. We assumed that there would be no major water encroachment in this field at the time we made our estimate.

Q. Wouldn't it be a fact that water production could have a great effect on the terminal reservoir pressure? A. If you are taking a theoretical case now, it is entirely possible. Certainly it would have an effect on terminal pressure.

Q. Now, let's take an actual case, the Rayne field itself. Don't you have data definitely indicating that water will be produced from wells in the Rayne field? For example, and in that connection, I call your attention to the fact that the Nodasaria A sand, Unit 9 well has a scheduled work-over to squeeze and recomplete higher the shut-off water production? A. That is correct. I am familiar with that well,

and as I expressed myself this morning, undoubtedly in that area is some formation water that is being produced out of that well. We are not positive why that is happening. We are assuming that it might be some local condition or else a break in the tubing or a poor cement job or some factor of that nature.

We realize that in this particular well this is happening, but on an overall basis for the field we do not expect it.

Q. The fact that you are proposing to recomplete at a higher elevation suggests, does it not, that the water encroachment is coming in from below? A. The reasons that the well is to be work-over I believe you find a better

answer that Mr. Marshall can give, for his reasons behind working that well over.

Q. Well, we will toss that one to Brother Marshall.

Isn't it a fact that the Edward Arceneaux well, No. 1, completed in the Homeseekers E sand, produced on test May 10, 1961, approximately 470 barrels of water A. Subject to check on that amount of water, I will accept your answer as being correct there.

Mr. Deakins: I move to strike the answer, of Mr. Olson. There is no evidence of this. I have had this subject check business pulled on me in 18968, Mr. Examiner, and made up my mind it would be the last time.

2461

Mr. Flaningam: Well, your witness proposes it. I didn't ask him to take it that way.

Mr. Deakins: That is why I move to strike the answer.

Presiding Examiner: Mr. Flaningam, I think the staff asked this witness this morning in your absence a question involving the amount of water produced from the well which you mentioned during the month of May, 1960.

Mr. Flaningam: 1960?

Presiding Examiner: Yes, sir.

Mr. Flaningam: The date I have here is May 1961.

Presiding Examiner: Well—

Mr. Lewnes: I believe, Your Honor, we also gave them the 1961 date, but we asked that he relate it to the volumes of gas—

Presiding Examiner: I am going to get to that in a minute.

Mr. Lewnes: I am sorry.

Mr. Flaningam: I am sorry, sir.

Presiding Examiner: In May 1960, staff asked the witness to check his work papers and ascertain whether or not 4,950 barrels of water was produced from that well during the month of May, 1960.

(2461)

They further asked him to check and determine whether or not during the month of May, 1961, 14,632 barrels of water was produced from that well.

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Mr. Deakins: Mr. Examiner, I think you have the wrong wells.

I think you are talking about the southeast fault block of Unit 1 of Homeseekers E.

Presiding Examiner: I am.

Mr. Deakins: Well, didn't Mr. Flaningam—

Presiding Examiner: Isn't that the one you inquired about?

Mr. Flaningam: I am talking about the Edward Arceneaux in the Homeseekers E sand.

Mr. Deakins: Unit 2?

Mr. Flaningam: No, this is No. 1.

I didn't mean, Your Honor, to certainly reproduce some ground that we have been over.

Presiding Examiner: You haven't been here this morning. But staff went down through this morning, and asked about—let me say—

Mr. Flaningam: My associate certainly doesn't consider that we are going over what was covered this morning. At least we are certainly trying to avoid it.

Presiding Examiner: Staff asked about 22 wells this morning, and the water produced from those 22 wells in May 1960 and May 1961. And they were two wells that had a high water production. You inquired about the first one, and I thought the second one that you inquired about was the other one.

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The Witness agreed to check his work papers and report back on staff's questions about the water production.

Mr. Flaningam: I think I will defer that until he reports

back. And I will have had an opportunity to check the transcript of this morning's.

Presiding Examiner: You can look at the record and then you will be familiar with what was reported.

Mr. Flaningam: Yes, sir.

Mr. Deakins: I thought it was different. That is why I couldn't relate it to anything we had today.

Mr. Flaningam: I am going to pass up any further questions on this subject on the assumption the witness is going to return no sooner than tomorrow sometime, and we will have had a chance to check the record.

Presiding Examiner. He may clarify then what you intend to ask him about now.

By Mr. Flaningam:

Q. Will you refer to your Exhibit X-2, to the first map, and state whether or not the Quebodeaux Well No. 1 in Section 7, Range 3, Township 9 south, is completed in the Krumpp A sand? A. That is the present completion, yes, sir.

Q. What is the approximate distance from that well to the farthest productive portion of the Klumpp A sand? Would you say it is approximately 10,000 feet?

A. Yes, I would say that was a pretty good approximation.

Q. Do you consider that that well will efficiently drain the Klumpp A sand, Mr. Olson? A. No. I believe it will certainly be necessary to put other wells into that sand.

Q. Now, will you refer to transcript page 1813, Mr. Olson? You testify there, do you not, including two additional reservoirs in your Exhibit X-2 as compared to your earlier studies of this field? A. That is correct.

Q. Are you familiar with the fact that Mr. Jacobs at transcript page 1898, at lines 2 through 9, relied upon

the testimony that you gave at transcript page 1813 apparently, and stated as follows: "While it is, of course, not exact as to what will be the future history of this field there is also the definite possibility of future discoveries and production history which increase the gas reserves and at the same time decrease the net cost per Mcf of gas produced in Rayne field."

He further stated: "This has been indicated in the testimony of Mr. Olson in connection with the new Homeseekers D-1 and D-4"—I am sorry. A. D-2.

Q. "Homeseekers D-2 and D-4 sands." Then he goes

ahead and says "And, of course, there may be others."

You are familiar with that testimony of Mr. Jacobs.

Mr. Deakins: You mean Mr. Olson? "Of Mr. Jacobs," did you say?

(Laughter.)

The Witness: I believe I was in the room at that time.

Mr. Flaningam: I think the reporter has it straight for the record, Mr. Deakins.

By Mr. Flaningam:

Q. One of these—this Homeseekers D-4 sand I think we already touched upon.

Q. You consider that as not having been tested. We won't pursue that any further.

Isn't it a fact that a number of other sands in the Rayne field, other than the sands for which you have included estimated gas reserves in Exhibit X-2, have been tested and found unproductive. A. I can't remember exactly what sands they might be. It was in my opinion that there were some other sands that I believe might possibly contain gas and will be brought in on production

when some of these other reservoirs are possibly depleted. It is just an opinion that I have.

Q. You didn't apparently think so well of your opinion that you included any reserves in your Exhibit X-2 for those particular sands or reservoirs?

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A. No. It was just an approximation on my part that I feel that some time in the future that some of these other sands might possibly produce gas.

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2469

Dan L. Marshall

was recalled as a witness and, having been previously duly sworn, was examined and testified further as follows:

Presiding Examiner: Your witness, Mr. Lewnes.

Cross-Examination

By Mr. Lewnes:

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Q. Mr. Marshall, will you refer to page 2 of Exhibit X-2? A. I have it now.

Q. Right. Mr. Marshall, when I make a comparison of the condensate and the plant liquids to be prodced in what is shown there as the first year and the second year, it appears that more condensate and more plant liquid is to be produced in the second year, 1962, than what is scheduled to be produced in 1961. Yet, the amount of gas to be produced for each one of these years is the same.

Now, could you indicate how that results? A. In the year 1962 the production from the Nodasaria sand as well as from the Homeseekers E sand was increased and the Nodasaria, being a richer reservoir, I mean having a higher liquid yield, and producing more gas, results in the production of more liquids in that year than in 1961.

Q. Well, now, you say the produtcion from these wells was increased from that reservoir. These are actual production figures. A. These are anticipated, estimated future rates of production. I think that shows on the exhibit.

Q. Oh, in other words, then, this is predicated on your assumption that the volumes, the 51,100 MMcf to be produced in the year 1962 will be taken from those particular

reservoirs? A. That is correct.

Q. Mr. Marshall, you also stated—I believe you said some reservoirs are richer than others? A. That is right.

Q. Could you elaborate a little on that? A. The condensate yields in the various reservoirs do vary from reservoir to reservior.

Now, the ultimate condensate yields as related to the residue gas as shown on the first page of Exhibit X-2 reflect those difference in ultimate condensate yield.

Q. Now, if I understand what you said up until this moment now is that the condensate and plant liquids to be derived from the volume of gas to be produced may vary, it all being dependent upon which reservoirs you are meeting the annual volume from, is that correct? A. That is correct.

Q. Now, in order to arrive, then, at your condensate and plant liquids, what did you use as a basis for determining that the annual volume would be produced from the various reservoirs or from the specific reservoirs upon which you would get this condensate and this plant liquid? A. These rates were generally in accord with current allowable rates at least as to the year 1961.

Beginning in 1962 and for a period until 1968 with-

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drawals from the Klumpp A and Klumpp D reservoirs were restricted to a half million cubic feet per day per well.

The balance—or an adjustment then was made in an upward direction on the gas to be produced from the Homeseekers E sand, the Nodasaria north and south. The withdrawals from these reservoirs were roughly in proportion to their reserves. That is, the relative withdrawals from the three.

Q. Then are we to assume that after 1968 they may not necessarily be in proportion to their reserves. A. After—no. They were—

Q. Oh. A. Throughout the life of those three principal reservoirs, the rates of production were roughly in accord with their reserves so long as there was delivery capacity available to produce that amount.

Q. Now, as to the remaining wells. A. The remaining sands?

Q. Sands. A. They are being—or it is anticipated that these will be produced in this schedule roughly at current allowable rates, until they no longer have the capacity to deliver at those rates.

. . . . . .

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Q. Now, how did you arrive at the ratio of condensate and plant liquids that would be derived from the scheduled volumes of gas indicated on page 2 of Exhibit X-2? A. I believe in my direct testimony, Mr. Lewnes, I said that in the case of certain reservoirs there were available laboratory studies of the volumetric and phase behavior of the hydrocarbon mixtures in those reservoirs.

Where such data were available, they were used to estimate the volumes of condensate and plant liquids that would come out—that would be produced at varying pres-

sures during the depletion of these reservoirs. For those reservoirs for which laboratory data of this type were not available, correlations were made as between the data that were available, and these correlations used to produce similar estimates for the reservoirs for which the laboratory studies were not available.

Q. Which reservoirs did you have laboratory data available? A. They were available on the Klumpp A., Homeseekers E.,

2482

Nodasaria A. north, and Nodasaria A south reservoirs.

Q. Now in arriving at these ratios, did you not take into consideration the actual production figures of condensate and plant liquids in relation to the volumes that had been produced? A. I attempted to do so.

Q. Now, Mr. Marshall, isn't it a fact that if you look at the ratio of your plant liquids on page 2 of Exhibit X-2 as it relates to the volume of gas to be produced and make that same comparison with the volumes produced and the plant liquids produced as indicated on Exhibit X-20, that will show that the plant products, the plant liquids have been produced at a greater ratio than that which you indicate in your Exhibit X-2? A. Do you mean by that, Mr. Lewnes, that the yield of plant products per unit of gas processed is higher on Exhibit X-20 than on X-2?

Q. That is correct. A. I have not had an opportunity to make such a comparison from Exhibit X-20.

I can relate to you what comparison I did make.

We had available to us at the time this work was done the results of the first twelve months of operation of the Rayne gas processing plant.

We took the volume of production as it came, gas

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production as it came from the various reservoirs, and applied our anticipated yields of plant liquids to it and

found that it was some 7 per cent lower than what was actually produced.

So with that, we then applied a correction of 7 per cent to our calculator yields in an upward direction.

I think that the data—I am positive that the data that we used to make this comparison is a matter of public record in the files of the Department of Conservation in Louisiana. And whether or not it is the same as is shown on Exhibit X-20 I do not know.

Mr. Flaningam: Would you state what period was covered? I mean you said the first twelve months?

The Witness: Well the plant began operations, Mr. Flaningam, in June of 1960.

Mr. Flaningam: That is what I thought Exhibit X-20 indicated. I just wanted to be sure.

By Mr. Lewnes:

Q. Mr. Marshall, when you made this comparison I think you referred to the production in the first year of Rayne field. Did you make that comparison with residue gas or total field production? A. No. This comparison was made with the total field production. It is a matter of coincidence that it was done that way. It happened to be convenient so to do.

2484

Q. Well, in other words, in order to find out what your ratio, then, is, you take the total plant liquids, divide into total production, and come up with a ratio as to what your ratio is for plant liquids in relation to volume of gas produced; is that correct? A. As you described it and defined it, it is obviously the ratio between the plant products and total field production.

Q. And you don't have a ratio that you could give us right now as to what it is in relation to your Exhibit X-2? In other words, do you have a figure as to what that ratio

is reflected in the volumes shown on Exhibit X-2? A. I do not have a single figure, no, sir.

Q. In other words, in order to come up with the volumes you have shown on plant liquids, is it not a fact that you would have to go reservoir by reservoir and state that so much gas is going to be produced from each one of these reservoirs in order to get the plant liquids which you have indicated in your Exhibit X-2? A. I would.

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2505

Thursday, December 7, 1961.

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2506

Stewart P. Osborn

resumed the witness stand and, having been previously duly

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sworn, was examined and testified further as follows:

Presiding Examiner: You have been sworn previously, Mr. Osborn, haven't you?

The Witness: Yes.

Presiding Examiner: Are you ready, Mr. Lewnes?

Mr. Lewnes: Yes, sir, Your Honor.

Cross Examination

By Mr. Lewnes:

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Q. Now referring to transcript page 1945, where again, at line 5, I posed a question to you—wait. I am sorry. This was during your direct testimony. The question was, "Do you believe Texas Eastern is entitled to earn a reasonable rate of return on its investment in the Rayne field?"

And your answer was "Yes", and you gave an explanation.

Now, would you define what you meant by investment, or what your answer pertained to as it relates to the word "investment"? A. Well, I believe that the investment should include all items of cost which we would have in the Rayne field.

Q. Well, could you start indicating what costs you are referring to? A. Well, I am referring to what we will have invested in our plant in the Rayne field. Does that answer it?

Q. Is that your entire answer? A. Yes, sir.

Mr. Lewnes: Will the Examiner direct the recorder to have

the answer read back, please.

Presiding Examiner: Will you read the witness' answer, please, Mr. Reporter?

(Answer read.)

By Mr. Lewnes:

Q. Is your investment in your plant—your use of the term—synonymous with what you have shown on Exhibit X-10? A. No, it is not limited to that, Mr. Lewnes, no, sir.

Q. Well, what other items should we include? A. Well, it is rather hard for me to answer right now because I haven't prepared a study for a rate presentation. But I would say this to you, that—and I can't speak for management, but we certainly would have to give some consideration to our balances in our excess note payments.

Q. You are referring now to what is reflected on Exhibit X-8? A. Yes. Just a minute, I have to check that. Yes, sir.

(2543)

Q. Well, for rate of return purposes you have indicated you would include certain items.

Would you or would you not include your miscellaneous deferred debits accounts for rate of return purposes?

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Mr. Deakins: Mr. Lewnes, let me—I don't know whether I want to object here or not. I was wondering whether you were asking him what he thought ought to be done or speaking for management.

Mr. Lewnes: I believe he is the comptroller and the comptroller I believe makes up the figures here, what goes in and what does not go in.

Now, does he include it in or doesn't he, or if he wants to state that he has to wait until someone advises him in Texas Eastern as to whether he will or won't—he can answer any way he likes.

Mr. Deakins: Mr. Examiner, I object to the question. It is repetitious. That question was answered previously. He said he wasn't prepared to speculate at this time as to what the return should be.

Mr. Flaningam: Your Honor, as a matter of clarification: When staff counsel refers to miscellaneous debits, is that something different or is he intending to refer to this other deferred debits account? A. It is just a matter of getting clear on the record what we are talking about.

Mr. Lewnes: What appears on Exhibit X-8, which says Rayne field, Schedule of activities in the other deferred debits account. That is the old title as appearing in the uniform system of accounts. The account now reads miscellaneous deferred debits account.

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Mr. Flaningam: So we are referring to the same thing.

Mr. Lewnes: That is correct.

Mr. Flaningam: I think that is very helpful.

Mr. Deakins: Mr. Examiner, in connection with that objection, let me read a statement that the staff of this Commission made in this very same case in the United States Court of Appeals for the District of Columbia Circuit in its brief at page 21.

Mr. Lewnes: Excuse me—

Mr. Deakins: Here is the position they took at that time.

Now, I am quoting: "The entry of certain figures in Taxas Eastern's books of account does not control the Commission as to the ultimate accounting to be followed, and in any event does not control the disposition of any future rate case. The Commission order here fixed none of Texas Eastern's rates to its customers."

And that is what they said.

Mr. Lewnes: Precisely, Mr. Examiner. That is why we are back here.

Mr. Deakins: That is right.

And now they want to confine him to something which the witness has said can't be done.

Presiding Examiner: Well, the witness said this. He said he was the comptroller. He said he might make recom—

mendations to the Texas Eastern executive committee and what they did with it he didn't know.

Now, he can't testify for management. He can testify what he knows of his own knowledge, and not for management.

Now limited to that, the witness may answer.

The Witness: May I have the question, please, Mr. Examiner?

Presiding Examiner: Will you find it and read it, Mr. Reporter?

(Question read.)

The Witness: Well, I certainly would take that balance into consideration in anything that I would be doing, Mr. Lewnes.

By Mr. Lewnes:

Q. Well, again, I don't think you have answered the question. As an accountant, do you consider miscellaneous deferred debits account as part of investment, of this nature now? Do you consider that as part of investment or don't you? A. I would say as an accountant I would, yes, sir.

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2581

E. A. Olson

was recalled as a witness and, having been previously duly sworn, was examined and testified further as follows:

Cross-Examination (Cont'd)

Mr. Deakins: You want us to put this information in you requested yesterday? We are ready to do it now before you start cross, if you want to.

Mr. Lewnes: Yes. That is O. K. You can put it in—

Mr. Deakins: It is up to you. I would just as soon do it one time as the other.

Mr. Lewnes: Yes.

By Mr. Deakins:

Q. Mr. Olson, yesterday Mr. Lewnes furnished you certain data regarding water occurring in the well formations and ask you to check that against the total production of gas, as I understood it, to come up with a percentage, is that correct? A. Yes. I have made the required calculations of the water data supplied by the staff and put into the record.

However, I was unable to check the barrels of water in a number of instances with the data that I had available to

2582

me.

Now, unless the staff was furnished with some additional data that I may have no knowledge of, that could explain these discrepancies.

I wish to state, however, that two wells in the Rayne field, namely the Nodasaria Unit 9 and the Homeseekers E southeast fault block Unit 1 well are both making formation water, but that all of the other wells that are making water, as I have previously testified to, are making a small amount of water vapor that condenses out of the gases of this nature as the gas is produced at the wellhead.

Q. All right.

Now, did you make the calculation that I asked you to do? A. Yes, sir, I have.

Q. All right. Would you just state that for the record, unit by unit? And I think it is year by year, isn't that correct? That would be for the years 1960 and 1961 separately, commencing with Nodasaria Unit No. 1 through 9, and then follow the same the same outline as Mr. Lewnes used in his cross-examination of you. A. If the staff requires it, I have made the barrels of water per million figure—if that is what they have in mind now.

As I say, these figures came from the water that the

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staff put into the record, of which I am not sure of how accurate they are.

Q. Yes. A. If they still so desire me to read off these barrels per million—barrels of water per million cubic feet of gas here, why I will be glad to, by wells and by May 1960 and by May 1961.

Q. You mean by that you only made the calculation. You couldn't check all these, is that correct, as to accuracy?

A. As I stated, there were a number of water figures, monthly water figures that the staff put into the record with the data I had available I could not check.

Mr. Deakins: You want him to go ahead and read those?

Mr. Lewnes: Yes.

I would like to indicate that all the water figures that we submitted into the record were taken off work papers submitted to us by Texas Eastern and it would appear, then, that this witness did not have available to him some of the work papers that were submitted to us by Texas Eastern. That is about the only reason I can find why you couldn't check these figures. And if you so desire, I can give you the work papers that we had.

Mr. Deakins: Let's have him look at it.

The Witness: Could I have it, please?

Mr. Deakins: Did you have those?

The Witness: No, I did not have these figures. So you had something in addition to what I had.

What I was attempting to do was to just check on a daily test that was made in the DT-1 records that are submitted to the Louisiana Department of Conservation.

So with this, I will accept these as being authentic, as long as these were submitted to you by Texas Eastern.

Mr. Deakins: All right, then, go ahead and read your calculation.

The Witness: The way I will read these will be the well number, the sand and well number, and then the barrels of water per MMcf for the month of May 1960, and then for the month of May 1961. Is that—

Mr. Lewnes: You are going to give us the ratio, are you not?

The Witness: Yes, the barrels of water per million.

Mr. Lewnes: O. K.

The Witness: If you so desire this information.
Nodasaria Unit 1, 1.5.

By Mr. Deakins:

Q. That is for 1960, May 1960, is that right? A. Now, instead of my repeating May of this and May of that—
Q. All right. A. I will just include two figures for each one. The

first one will represent May 1960 and the next will represent May 1961.
Q. O. K. A. Nodasaria Unit 1, 1.5 and 1.4.
Nodasaria Unit 2, 1.2 and 1.9.
Nodasaria Unit 3, 1.2 and 1.8.
Nodasaria Unit 4, 1.5 and 1.6.
Nodasaria Unit 5, 1.6 and 2.2.
Nodasaria Unit 6, 1.2 and 1.7.
Nodasaria Unit 7, 2.1 and 1.7.
Nodasaria Unit 8, 1.4 and 2.5.
Nodasaria Unit 9, 28 and 36.8.
Homeseekers D-2 Unit 2: I have nothing for May of 1960. In May of 1961, 1.8.
Homeseekers E Unit 1, 2.6 and 2.2.
Unit 2, 1.5 and 9.
Unit 3, 1.5 and 4.2.
Unitd 4, 1.3 and 1.7.
Northeast Fault Block Unit 1: Nothing in May of 1960 and in May of 1961, 5.3.
Homeseekers E Southeast Fault Block Unitd 1, 5 and 203.
Klumpp A, Quebodeaux No. 1: I have nothing for May of 1960 and 2 for May '61.
Q. Did you leave out the South Fault Block—the Marie Petitjean?

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A. The Marie Petitjean is not considered a well in part of this field as a reserve estimate. That is why I left it out. Klumpp D, the Arceneaux Unit 2, 1.2 and 2.

Elton Arceneaux Unit 1, 1.1 and 1.3.

W. Petitjean Unit 1, 2.7 and .76.

W. Petitjean Unit 4, nothing in May of '60 and 52 in '61.

Q. That concludes that summary, does it not? A. Yes, sir.

Mr. Deakins: I think that is all we have, Your Honor.

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By Mr. Flaningam:

Q. Isn't it a fact, Mr. Olson, that the Nodasaria A sand Unit No. 9, Well No. 1, mentioned on transcript page 1824 as a proposed work-over, produced in May 1961, 3,000 barrels of salt water? A. Yes, that is the figure I have here on my paper.

Q. Then, isn't it also a fact that the Homeseekers E Unit 1, in the Southeast Fault Block, that is the E. Arceneaux No. 1 well, produced 14,832 barrels of salt water in May 1961?

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A. That is the figure I have on my paper.

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Redirect Examination

By Mr. Deakins:

Q. Mr. Olson, yesterday Mr. Lewnes read into the record what was claimed to be the differences in net pay that you used compared to those which appear on some sort of a Continental Oil report which are not in this record.

Let me ask you this: When you made your study of this field did you have that information available?

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A. I had copies of this particular form that Mr. Lewnes referred to, yes, sir.

Q. Did you rely on that in any way? A. I rely on these forms. They are called new well completion and abandonment record forms. We rely on these forms to obtain several things—the completion of the well, the location of the well, drill stem tests that may be indicated, and physical equipment contained in the well, and possibly some other minor items.

Q. But how about with reference to the estimate of net pay thickness? Do you rely on that or do you make an independent study? A. No, we don't even bother to check that particular data, as we are only interested our own self in making our own independent study and whatever anybody else has done on a form of this nature we would not put any qualifying statement at all on it.

Q. Why is that? Is that because you don't know what information they have available or— A. I have no idea of course, who counted the sand, how it was counted, or what type of information was used to obtain it, and without knowledge, of course, who might have done something and their particular qualifiaction one could not put any particular significance to it.

Q. Now, yesterday Mr. Flaningam asked you some question

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with reference to the drill stem test on the Navarro A-1 well in Homeseekers D-4 sand.

Let me ask you—you said at that time that you didn't know what the interval was. Have you since that time checked the interval, and if you have, state what you found. A. Yes. I would like to just clarify for the record—into this test that Mr. Flaningam told me about,

the Navarro No. 1 well, pertaining to the Homeseekers D-4 sand.

The particular interval that I show on the new well completion form was from 12,382 to 12,440.

Q. Feet? A. Feet.

Q. Right. A. The remarks opposite this particular test indicated salt water and gas. And I believe it was stated that it is just made salt water. So I want to clarify that particular part.

Now, the main thing that I want to bring out here in this test is that the proved limit that we have used on the Homeseekers D-4 reservoir was at 12,286 feet. So that this particular interval that I have previously mentioned is below our proved limit that we have used for the reservoir.

We have not included any net gas pay in the Navarro well for this particular sand.

Q. Well, is it likely that there is some?

A. We, of course, did not conclude that this was a conclusive test in this reservoir, mainly because of the fact that we did not have the backup data to go with the remarks of salt water and gas.

Now, you can draw some conclusion, however, and that is that some gas was undoubtedly made. So in that respect I would say it does strengthen the fact that we have included this reservoir in our estimate.

Q. Now, yesterday in response to some question of the staff which started out in connection with a 93 percent recovery factor, I think Mr. Lewnes asked you if you knew of any wells that had been produced at abandonment pressure of approximately 500 pounds or—

Mr. Lewnes: I object, Your Honor. I don't think we have asked him that question.

Will counsel please specify where in the transcript we

did ask that question, as to the wells that had been produced at that particular—

Mr. Deakins: Well, let me ask you this—on redirect, I will ask you this question.

By Mr. Deakins:

Q. You are familiar with the fact that yesterday Mr. Lewnes asked you whether or not you had ever made an estimate of reserves which showed a recovery factor of 93 percent, isn't that correct?

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Mr. Lewnes: We object again. Your Honor, that is not the question we posed to the witness. The question posed to the witness was: In any proceeding in which he prepared exhibits to be filed with this Commission, did he include a recovery factor as high as 93 percent, other than for any application that might have been filed on behalf of Texas Eastern. That was the exact question posed to the witness.

Mr. Deakins: All right. With that correction—

By Mr. Deakins:

Q. You recall that question, don't you? That question was asked you? Just answer yes or no. A. Yes, I recall that question.

Q. All right. Now, I think you testified yesterday also, and correct me if I am incorrect in this, that you did not use a recovery factor in percents, but instead you used an abandonment pressure of 515 pounds per square inch— is that correct? A. In the exhibit I had prepared for this case, yes, sir.

Q. And as Mr. Lewnes calculated it, it apparently turns out to be a 93 percent recovery factor, is that correct?

Mr. Lewnes: We object, Your Honor. We didn't calculate it on the depletion basis. We calculated it on recover-

able reserves as opposed to the reserves in place and came up with this 93 percent factor. We didn't use the abandonment

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pressure calculations.

Presiding Examiner: It seems to me in the beginning that staff said they had taken the figure shown on Exhibit X-2, page 1, line 16, which is the estimated initial gas in place and had divided that into the figures shown on line 18 of the same exhibit and column and page and they came up with the 93 percent.

Mr. Deakins: That is right. Well—

Presiding Examiner: And then after that there was conversation between the witness and staff about the abandonment pressure. And then following that, I think the witness testified to an abandonment pressure of a hundred to 515 pounds. And then after that, there was a series of questions by staff of the witness with regard to the Iowa field and any other fields that he migh tknow about that had that high a recovery factor and abandonment pressure.

Mr. Deakins: All right.

Then with that in mind—

By Mr. Deakins:

Q. Now, Mr. Olson, you said yesterday you didn't know of any fields that had abandonment pressure of 515 pounds, as I recall your testimony, is that correct? A. I didn't have any with me, no, sir.

Q. Have you since that time had someone working under your supervision and direction in your office at Dallas check

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the records of DeGolyer and McNaughton to determine whether such fields existed? A. Yes, sir.

Q. Who did you talk to there? A. I talked to Mr. E. R. Scott of our firm.

Q. All right. Now, did he make a check in an approximate two-hour period? A. Yes, sir, the check was made.

Q. All right. Will you staate, by number, and state how many fields your records show produced to an abandonment pressure of approximately 500 pounds?

Mr. Lewnes: We object, Your Honor. It is pure hearsay. He is stating what someone told him. He doesn't have—he hasn't made these computations at all. These are things apparently given to him over the telephone by someone else. If we are going to testify along this line, let's bring the somebody else up here and test background of the figures which he used to supply to this witness.

Presiding Examiner: I think the objection is well taken.

Mr. Deakins: Mr. Examiner—

Presiding Examiner: It is pure hearsay.

Mr. Deakins: He testified this was done under his direction. And it is part of the records of his firm there. We put similar testimony in on Docket G-18968.

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These are actual fields which are actually producing, at those pounds. It may be very painful to the staff to hear this, but it is a fact, that we have proven in Docket G-18968 by the testimony of Mr. William Gorton as to some of these, and Mr. Olson here—his firm has others. They have made these studies. You know one man in a firm as large as DeGolyer and McNaughton doesn't do all the work.

Presiding Examiner: Oh, I know. I have seen their office out there. I know that one man doesn't do all the work.

Mr. Deakins: That is right.

I only wanted him to name the fields and state the states where they are, so to show that there are other fields. Because that was the question the staff asked him. And he didn't have that at his finger tips. Had he known—had he

had this same thing at his finger tips he could have answered it then and there would have been no objection to it.

Mr. Lewnes: I believe Your Honor has indicated it was not the question we asked the witness. And we have objected to it as being hearsay. I believe the Examiner has passed on it.

The Witness: It seems—

Mr. Deakins: Wait a minute, Mr. Olson.

Presiding Examiner: It is Rayne field we are interested in. How many other fields have abandonment pressures at that 500 pound I don't think makes any great material difference.

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The objection is sustained.

Mr. Deakins: I didn't think it did, either, Mr. Examiner, except it appeared that there was an effort to impugn this witness by the fact that he had only made this one estimate before this Commission.

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Thursday, November 29, 1962

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Chairman Swidler: Pursuant to the Commission's order issued October 24, 1962, oral argument is now to be heard on the issues raised by the exceptions to the examiner's decision in the reopened proceedings in Texas Eastern Transmission Corporation, et al., Docket Nos. G-12446, et al.

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2643

Oral Argument of Jack D. Head

Mr. Head: My name is Jack D. Head, representing Texas Eastern Transmission Corporation. I would like to reserve 15 minutes of my time for rebuttal.

Chairman Swidler: Very well.

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After the issuance of this opinion, Texas Eastern, on July 27, 1959, acquired the Rayne field leases, connected them to its system in August of 1959, and the gas has been flowing through Texas Eastern's system to its customers since that date.

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Commissioner Ross: Is there anything to prevent you from making sales from this Rayne field to another pipeline?

Mr. Head: No, sir. Not under my conception of the law. However, I can't conceive that we would do it. We have already built into the Rayne field. It is already connected into our system. I do not believe—

Commissioner Ross: You say you haven't dedicated it to anybody specifically, so theoretically then you have the right

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to make sales to another pipeline that would offer you a good price for it?

Mr. Head: As I appreciate the law today, sir, I don't believe that leases owned by a pipeline, are dedicated to the pipeline, going back to the Panhandle Eastern case—I will tell you this, Texas Eastern would not even consider

it. You asked me, as a legal proposition, could we? I think it is possible.

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Commissioner Ross: Why should they agree to it? They aren't being furnished this gas. You aren't dedicating it to them, are you?

Mr. Head: We are not dedicating it to them, no, but it is gas available to our system which they at that time thought we should have.

Commissioner Ross: You thought you were going to sell it to them, then, until you changed your mind?

Mr. Head: I never changed my mind, sir. I have been selling gas from this field to the customers as a part of my rolled-in supply since August of 1959.

Commissioner O'Connor: You have a commitment to the

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customers for a volume of gas. It doesn't necessarily have to come from Rayne?

Mr. Head: No.

Mr. O'Connor: The reserves from the Rayne Field support that commitment?

Mr. Head: The reserves from the Rayne Field support that commitment, and certainly, as I say, as a practical matter, Texas Eastern would never sell the Rayne Field gas to anybody else.

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Commissioner Ross: Do you actually own the gas under the Louisiana law?

Mr. Head: Under Louisiana law, and I am not a Louisiana lawyer, you do not own the minerals in place, but when you have a lease, you own the right to explore for

and produce those minerals and to continue to produce them so long as commercial production is maintained.

Under the laws of Texas, you actually own the gas. Under the laws of Louisiana, you only own the right to produce it.

Commissioner O'Connor: Under a similar contract in Texas, you would own the gas?

Mr. Head: No, under Texas, the mineral owner is still going to own the gas. But under Louisiana, you can't own the minerals, for more than 10 years, and they have a restriction there. At any rate, we do not own the gas, we own the right

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to produce it.

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Oral Argument of Mrs. Barbara M. Suchow

Mrs. Suchow: May it please the Commission, my name is Barbara Suchow. I am Assistant Counsel of the Public Service Commission of New York.

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Before my time expires, Your Honors, I would like to mention one point, relating to an issue which PSC has never raised in this proceeding, but which has become important in the case since the remand. We are very eager that PSC's failure to file exceptions to the Examiner's decision should not be construed as concurrence or acquiescence on our part in his ruling on the jurisdiction over the sellers issue. We don't agree with him at all. We agree with the posi-

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tion asserted by the staff, by Examiner Weston in his interim decision of last January in the MCN case, by other

intervenors, and in other cases, and by the staff in Tennessee's Bastian Bay case, CI61-106, I believe.

Our reason for not filing exceptions to the Examiner's decision on that issue is that we didn't feel aggrieved by it. Rather, we feel that the operative provisions of his decision vindicates completely the basic objective of PSC in this case from the beginning, and that is: It demonstrates that the consuming public can be adequately protected through the Commission's jurisdiction over the pipeline, even if the Commission should choose not to—or should choose to defer decision on the jurisdictional issue in this case.

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Oral Argument of J. David Mann

Mr. Mann: Mr. Chairman, members of the Commission, my name is J. David Mann, and I appear here both for the United Gas Improvement Company and for the Philadelphia Electric Company, which I shall refer to simply as the Philadelphia Companies, and I should appreciate it if I may continue my argument for the total of 25 minutes allowed. Hopefully, I can give back five minutes you gave my good friend, Mr. Head.

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As I will say to you subsequently, we do not insist you assert this jurisdiction. Indeed, we suggest that you do not have to. But I urge you most earnestly to reject the Examiner's conclusion that you lack the jurisdiction, for if you do not, in

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my judgment, indicate your belief that you have jurisdiction over this kind of transaction, it seems to me that you

will have opened a very great loophole in the entire regulatory structure over procedures. You will have created, if you will, by silence or inaction, the very kind of regulatory gap which the Phillips decision, the CATCO case, and others, have suggested must be closed.

Now the producers, by changing the form of their sales contracts, which were originally before Examiner Law of this Commission, have sought to insulate themselves from effective regulation. First, we suggest jurisdictional issues which the record in this case indicates Texas Eastern says has been settled by the Court was not in fact ever before the Court. The brief which was filed by this Commission at page 17 suggests that the Commission had no authority over the lease sale, and that therefore the Court was barred from considering the issue sui sponte.

If that contention is correct, if the Commission at that time, as was consistent with the prevailing philosophy of the Commission at that time, felt that it had no jurisdiction over this kind of a transaction, and it so argued before the Court, query: How could the Court have decided the issue, it was not before it?

I would say that the Court, in commenting on the jurisdictional issue, did say, in passing, that the Panhandle proposition

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indicated that the Commission has no jurisdiction over gas leases. This may be true. But I would point out to you that there is a very clear distinction between the Panhandle-Hugoton lease sale involved in the Panhandle case referred to, and this kind of a transaction with which you are confronted today. The Panhandle-Hugoton deal was simply a case in which Panhandle spun off—I forget how many acres of its reserves, or acreage, in the Hugoton field, to the Hugoton Production Company, if I recall it correctly, which was not an interstate pipeline at all. Gas

from that acreage never went into interstate commerce. It was never intended to go into interstate commerce.

Contrast, if you will, the Rayne field situation, in which you have crude reserves, everything except the Christmas trees, practically, which reserves were destined to go into interstate commerce, initially under gas sales contracts with Texas Eastern and subsequently under the lease purchase agreement. It seems to me there is a clear line of distinction.

Commissioner Ross: Would you go further and say that were there not this distinction, that the Panhandle case should be overruled, that is in wrong law?

Mr. Mann: No, sir. I wouldn't say that the Panhandle case should be overruled. I think perhaps the Panhandle case is 100% distinguishable from this, and that each can be considered on its own merits. I think that there was probably

some argument before the Commission at one time or another before the Examiner at any rate, that the Commission should not, as a practical matter, assert jurisdiction over this kind of a deal, for the reason that if it did, you would be confronted with a regulatory problem every time Joe Doe wanted to sell ten acres of gas leases to somebody else. This is not the case at all.

In effect, that is what you had in the Hugoton case, the Panhandle-Hugoton case. You would not, in my judgment, by asserting jurisdiction over this kind of a transaction, subject yourself to the kind of administrative chaos it has been suggested might face you if you did assert the jurisdiction.

I would say that the complete answer to this question of your assertion of jurisdiction is found in the Phillips decision itself, which was handled down in June of 1954. The Supreme Court in that case indicated that the Congress

planned to close the regulatory gap at both ends of the transmission lines, and if I may quote a passage or two from that decision, at 347 U.S. 684, the Court said:

"We are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission system."

It seems to me this is clearly that kind of a wholesale, and I urge that the Commission speak out on this point, lest by its silence the Examiner's conclusion that the Commission

lacks jurisdiction may be deemed to have opened the sort of regulatory gap which we believe should not be opened.

Turning now to the question of price:

We have indicated that we do not believe the Commission needs to assert jurisdiction over the transaction to effectively control the situation with which it is confronted here. We have suggested that the answer lies in the Commission's conditioning a certificate issue here by providing that Texas Eastern shall not be permitted at any time in the future to include in its cost of service a price for the Rayne field gas in excess of what you determine to be the in-line price which prevailed at the time of the Rayne field transaction.

Now, that price, it seems to me, is the CATCO price.

Mr. Head argues to you gentlemen, not that the in-line philosophy is not applicable. Indeed, he sought very carefully to distinguish Rayne field from CATCO. He devoted his attention to the fact that even assuming the in-line philosophy applies, Rayne field is a good deal, and that the price involved is an appropriate price.

Now, I am troubled about how to cope with the many numbers Mr. Head used in trying to tell you what this price is. All I can say is, so far as I know, there has been no renegotiation of this contract since the case went to the

Court of Appeals. The price which is before you now is exactly the same price which the Court of Appeals had before it when the

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cases went up.

The Court of Appeals said, "Under the proposed lease purchase arrangement petitioner claims the total cost to Texas Eastern for each Mcf of Rayne field gas will be 22.89¢, including Louisiana tax of 2.3¢. . . . We think it clear that the price is high enough to be in the disputed area to which the CATCO rule applies."

Now, I do find it difficult to break this price down as Mr. Head did. I can say this to you: that Exhibit X-18 indicates under the title "Texas Eastern Transmission Corporation, Cost of Service Study, Rayne Field, Case 4", that the total cost of gas—average cost—is the 24.34¢ which has been mentioned to you, which includes, if you will, the treatment of the so-called prepayment which Texas Eastern makes because of the fact that it will pay for the gas over 16 years and will take it over a period of 30; again saying, however, I can see no difference in this price from the price that went to the Court of Appeals. As far as I know, it is precisely the same.

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Oral Argument of George P. Lewnes

Mr. Lewnes: My name is George P. Lewnes, Commission Staff Counsel in this proceeding.

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Now before discussing the fluctuating factors, or, as I prefer to call them, the variables, which show that the cost to the consumer for this gas will be upwards of the

94.34(, we should take a look and see if jurisdiction can be asserted here upon remand, for if it can not, further discussions would be purely academic.

Now staff's answer to the question of whether or not the Commission can raise the jurisdictional question here on remand is a resounding aye, a review of the record made in that Court of Appeals case, as indicated by, I believe it was UGI's counsel, reflects that the jurisdictional or non-jurisdictional aspects of Rayne field acquisition was not challenged in that Court and this was fully acknowledged by Texas Eastern in its initial brief. It therefore follows that although the Court

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noted that in the past the Commission was held not to have jurisdiction over gas leases, citing Panhandle, it made no finding as to the jurisdictional status of this specific type of so-called leasehold acquisition. That issue wasn't before the Court. The Court's remark was obiter dictum. It was not responsive to any argument raised in the case. It was completely unnecessary to the decision of the case. And furthermore, as counsel for UGI has pointed out, comparison with the Panhandle case is a vacuous analogy.

All right, what then; what then, were the Commission's enlightening words on this subject when it initially gave the certificate? The Commission stated, in one sentence, "Texas Eastern has not filed an application for a certificate authorizing the acquisition of Rayne field leases and we have no authority to issue such a certificate."

Well, certainly the Commission had no authority to issue such a certificate in view of the fact no application was pending for such a certificate. But as we have said in our brief, even if the Commission had fully examined the facts and terms of the transaction at that time, which it did not, and even if Texas Eastern had made a full and complete

disclosure of its proposals at that time, which it did not, and had the Commission upon a full examination of a complete disclosure specifically found in no uncertain terms that it lacked jurisdiction over this acquisition, it would nevertheless not be precluded from re-evaluating such findings at the present juncture in this case.

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The applicants have been unable to cite one lone case in opposition to the myriad of precedent cited by the staff and discussed by the staff in its brief in support of its position, and that is understandable, because there is none. So we move into the next question.

Upon what grounds may we assert jurisdiction in this case? Well, our position has been that once the provisions concerning the subject transaction are denuded of the subtleties of the contractual form the transaction is exposed as being in fact a long-term gas purchase contract subject to the jurisdiction of this Commission. That the Commission has the authority to look behind a contractual form, has been clearly affirmed by the Supreme Court in the P.G. Lake case which we cited, and I quote from the Court's decision there, "These arrangements seem to us transparent devices. Their forms do not controlled. Their essence is determined not by subtleties of draftsmanship but by their total effect."

What, therefore, is proposed to be conveyed? The applicant tells us it is a leasehold acquisition. But their position is akin to the patent medicine man, who after advising the local folks of the curative powers of a particular snake. Assumes a fit of objectivity stating "But don't take my unsupported word for it, folks, read what it says on the label."

Well we have gone beyond the label and analyzed the agreement, and lo and behold, it is the same old gas purchase contract we have been used to seeing all

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along, ribband in some novel phraseology.

As they say on the TV commercials, "Make the individual test." Is this a leasehold acquisition or is it a purchase of gas? Here are the facts.

Chairman Swidler: Suppose you concluded that it was a leasehold acquisition, would that be terminated on the jurisdictional question?

Mr. Lewnes: Not necessarily, Your Honor, then we would have to go into a full discussion of the Examiner's rationale, as to why Panhandle is no longer a viable brand of law.

Chairman Swidler: You first distinguish the facts from the leasehold?

Mr. Lewnes: Yes, sir. For an initial down payment of over $12 million and a payment of 16 annual promissory notes totaling over $22 million, Texas Eastern is going to acquire all the seller's working interest gas rights between the surface and a given depth, plus some lease and well equipment and enumerated fixtures. The producer sellers retain all interest in gas, oil and minerals found beyond the gas strata conveyed. They retain or they get all the liquid revenues to be derived during the note-payment period from the gas produced in the strata conveyed.

Additionally, the operator of the interests conveyed will continue to be Continental, who happens to be the largest interest holder here.

Now, in this connection, we note that the installments

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are due monthly over a 16-year period. Texas Eastern anticipates producing the gas over a 29-year period, and as previously indicated, there will be prepayments; additionally, the notes have an acceleration clause, so the note

payments are geared to specific volumes of productions, causing those installments to trigger or accelerate.

On these facts alone, the instant transaction is akin to situations where the producer and pipeline company enter into requirements contracts to sell and buy gas produced from the field, with the price specified not to so many cents per Mcf, but so many dollars a year. There are various other elements in the instant form of gas purchase contract which have already appeared in the usual producer pipeline gas purchasec ontracts.

There are instances of contracts effective for the life of a field, such as that proposed here. There are also minimum take or pay for clauses in most contracts which require annual dollar payments by the pipeline for up to a given volume of gas, sales in excess of such volume being paid for on a cents per Mcf basis. The minimum dollar amount which the pipeline must pay is usually based on the mutual agreement of the reserves and at what rate they will be produced. We have even seen contracts to sell gas with the cash prepayment feature. That was the recent Wisconsin-Michigan pipeline case. And now a brief look at the law of situs and its relationship to the contracting parties progeny.

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Under Louisiana law, and we have cited cases, a leasehold interest is an incorporated interest, a profit a prendre or a licensing to go on the property to search for, to find minerals and sever same and title to the minerals does not vest until they are brought to the surface and reduced to captivity.

Commissioner O'Connor: The same principle applies to the original leasehold then?

Mr. Lewnes: That is correct. What does this mean, then? It means the producers have from the owners a license to hunt for and capture minerals, and that is all

they conveyed to Texas Eastern. Now, in the so-called assignment and conveyance to Texas Eastern, it is not an assignment of a leasehold, but a transference of this license, and in this particular case in part, because the producers have made certain reservations. Whether or not there is specific language contained in the original lease to the producers, permitting them to make a partial transference of their license without the express approval of the owners is not known. Because the leases are not in the record, Texas Eastern having opposed staff's request in the original proceeding to have Texas Eastern submit them into evidence.

Chairman Swidler: The leases to the producers are not in evidence?

Mr. Lewnes: Yes, Your Honor. We do know there is no

privity of contract between the owners and Texas Eastern. One other point on Louisiana law. Under Louisiana law, an original licensee—which in this case is the producer—continues to be liable to the licensor, or the owner, for breaches of express convenant of the lease occurring after his transferal of said license, unless the original license contains a clause expressly excluding him from liability. Again, we don't know whether that is in the leases because we don't have those original leases.

Now we do know, however, or we can infer, that such a clause is not in these leases. Because the producer sellers and the pipeline applicant have entered into a further agreement, whereby in order to save harm to the property for which the producers would be liable to the owners, the producers have agreed to be the operators, that is, Continental, et al., and this agreement will show that it completely vitiates any license given to Texas Eastern under the assignment and conveyance.

What the parties have done here is excogitated magnificant spider webs, being careful apparently to stay within the bounds of Louisiana law, but giving the illusion of having gone beyond the scope of Commission jurisdiction.

The truth of this statement, plus further proof that the parties are in fact contemplating a sale of gas, tile to which will be taken by the purchaser at the surface, may be seen by

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reading the assignment and conveyance and in juxtaposition to the management agreement. A management agreement which sets forth that Rayne field will be operated by the producer-seller, Continental, during the note-payment period, an agreement that states that sole discretion as to how Rayne field will be operated and produced is retained by Continental, an agreement that Texas Eastern made no mention of in the original proceeding, an agreement that came to light only during cross-examination of one of the Texas Eastern's witnesses, an agreement that Texas Eastern's counsel arguing here today vociferously opposed putting into the record, and it was only put in the record upon the staff's insistence and the Examiner's direction that it be put in the record.

Chairman Swidler: Did they object to that?

Mr. Lewnes: Yes. The management agreement between Texas Eastern and producers, Continental: It turned out to be the key that let the lid fly off Pandora's box. What is this management? It is a restatement of Continental's duties as an existing operator of Rayne field, plus a commitment that Continental will undertake to be prepared to deliver to Texas Eastern at Texas Eastern's request specified minimum daily quantities of gas during the 16-year note-payments period, and these minimum volumes of gas

are in excess of what Texas Eastern is showing in its rate of production schedule.

Now, Texas Eastern's witness, who negotiated this trans-

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action, after much hedging on cross-examination, finally had to be coaxed by the Examiner, and he did admit the manner in which Rayne field will be developed and operated will be at the sole discretion of Continental, as per the management agreement.

Now, the agreement also says that Continental will pay all the enumerated operating costs, but that it will be reimbursed for these outlays. One thus gets the illusion Texas Eastern is paying for the operating costs. However, when we go back to the assignment and conveyance, we find that the reimbursement being made by Texas Eastern to Continental for these operating costs is out of the revenues derived from the liquids produced in conjunction with the gas, revenues that belong 100% to the producer-sellers. In other words, he is paying the producer out of his own pocket. You see, now the producers are actually going to perform in the exact manner as they would under the conventional type of gas purchase contract, but are getting some added fringe benefits which I shall discuss later on. And although now there is some apparent transfer of a license under the so-called assignment and conveyance, Texas Eastern is precluded from exercising any right thereunder by virtue of this agreement.

The agreement also says that the rights and duties of Continental under Article 1 are limited, in that it has no

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control over the responsibility for the production from the management area after the production reaches the first control point above the surface on each well. The obligations thereafter accrue to the purchaser, who is responsible for

gathering, handling, et cetera, thus we see the purchaser does not get control or title to the production until it goes past the first control point at the surface.

Now you might say, "Mr. Staff Counsel, what kind of nonsense is this? Why would Texas Eastern obligate itself to pay annual notes over a 16-year period and get title to nothing until, as, if, and when the gas is produced?"

The answer is simple. Texas Eastern is not obligated. There is no direct transaction between Texas Eastern and the producer-sellers. The entire transaction as shown here today is through the dummy corporation, Louisiana Gas, formed by Texas Eastern for this express purpose. Louisiana Gas makes the initial payment to Continental, and will also execute the notes. Louisiana Gas then gets the license. It transfers the license to Texas Eastern simultaneous with Texas Eastern's payment to it of the down-payment which it passes on over to the producer-sellers. Texas Eastern is not involved in the notes. Although Texas Eastern will make the note payments via the conduit, Louisiana Gas, Texas Eastern will not, by express provision, assume or agree to pay the notes. In other words, the producer-sellers have agreed to a no-re-

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course action against Texas Eastern, and certainly there are no assets in the dummy corporation, other than $5,000.

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However, do not be misled that Texas Eastern's Consumers are thus protected, because although the notes are payable in the 16 years, the production is scheduled for 29 years. Thus, by the end of the note payment period, if production goes according to the way it is scheduled, Texas Eastern will have a balance in its deferred debit account of over 25 million dollars for pre-paid gas, a balance upon which it will seek a return. In the same year, the net investment in facilities is shown to be only $4.

million. If after the note payment, period, the remaining estimated recoverable reserves do not materialize, Texas Eastern's consumers will have virtually bought a pig in a poke.

And this leads us into the question of the reliability of Texas Eastern's reserve estimate.

Commissioner O'Connor: If the reserves are greater than estimated they will incur to the consumers won't they?

Mr. Lewnes: That is correct. However, we will see the reserve estimate is completely overstated, as shown in the record.

But at this point I should just like to make a passing mention of the Panhandle case which has been served up to us as supporting the proposition that the Commission does not have jurisdiction over this type of acquisition. In the first place the Commission does have jurisdiction by virtue of the facts of this case. Secondly, the Panhandle case is a completely different case. And thirdly if necessary the Commission

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could go to the Examiner's decision in the MCN case, discussing whether the Panhandle case should no longer be considered precedent. I should like to use the remaining time to discuss the per Mcf price of this gas along with the variable factors affecting the price, a proposed method of resolving the issues and some rebuttal of Texas Eastern's presentation here.

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Rebuttal Argument of Jack D. Head

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Now, counsel says that there is something sinister about the management agreement, that he brought that out on

cross-examination of this witness, and then compelled me to bring it forward.

I am sure the Staff Counsel will not dispute my statement that I had theretofore, before the hearing ever commenced, furnished Staff Counsel with the management agreement. He had it. He didn't discover it on cross-examination; it was in his possession. I just opposed the introduction of it because I did not think it was material and relevant to this case, but there was no attempt to hide the management agreement from Staff Counsel. Staff Counsel also complains that he did not have these leases. It is true that in the hearing in which this particular staff counsel did not participate, a request was made for a subpoena duces tecum for all of the lease files, which is a tremendous thing. That was denied by the Presiding Examiner. I can almost swear, I haven't been able to confirm it—but I can almost swear I gave this particular Staff Counsel before this hearing copies of typical

leases in the Rayne Field. He never thereafter requested a subpoena of any other leases or requested of me any additional leases.

Commissioner O'Connor: By typical leases, they would include some?

Mr. Head: They were actually leases which I represented to him were typical of the leases in the field.

Commissioner O'Connor: Including some of Continental's?

Mr. Head: That is right. These were typical leases acquired.

Commissioner O'Connor: Is Rayne Field unitized completely?

Mr. Head: Yes.

Commissioner Morgan: Did I understand you to say

this is leases from the owners of the land to the producers which you acquired?

Mr. Head: The owners of the land gave leases to Continental, et al. Continental, et al, then drilled and discovered gas. Thereafter, the leases which Continental, et al, acquired from the owners of the land—they assigned those leases to us.

Commissioner Morgan: All rights under the leases?

Mr. Head: All rights under the leases with the exception of, they reserved the oil, and they reserved a production payment on the liquids, and they reserved any rights below the then deepest producing horizon in the field.

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Commissioner Morgan: And they reserved the right to be the operator?

Mr. Head: No. We entered into a separate management agreement with Continental because Continental had drilled some 18 wells. These are very high-pressure wells; very deep wells.

We entered into an agreement and asked them to manage. Under that management they are able to manage the wells better than Texas Eastern, since they had all the experience of drilling them.

Commissioner Ross: Do you have some of your own wells in this area too?

Mr. Head: In this area?

Commissioner Ross: Rayne Field area, just adjacent to it?

Mr. Head: No, we have no production adjacent to Rayne.

Commissioner O'Connor: Can you cancel the agreement with Continental?

Mr. Head: Under certain circumstances it can be cancelled.

Commissioner Ross: Would you be willing to?

Mr. Head: No, I think it is a good agreement. Staff tells you, Continental tells us whether the wells will be drilled or not. The management contract says "No well shall be drilled, nor shall any existing well be deepened below the casing previously set therein, without the consent of Louisiana Gas."

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We call the shots on the wells, where they are to be drilled, and what-not.

Commissioner O'Connor: What about the production of the gas? Do you call the shots on that?

Mr. Head: We call the shots on that. Under the Management Agreement we specifically file the nominations for the gas. We control nominations, so we control the production, which means we control the reservoirs from which they are produced.

Of course, the allowables are set by the Louisiana Conservation, but we are the ones, under the specific terms of the management agreement that have charge of that.

Commissioner Ross: What would happen to Continental's finances if you didn't take any gas out of this field for four or five years, or a very, very minimum amount?

Aren't they expecting as a part of this whole agreement to get a reasonable amount of money from their liquids?

Mr. Head: Their liquid revenues would drop off, yes.

Commissioner O'Connor: Staff counsel made the statement that, or gave the impression to me that Continental had determined the production of liquids because they could determine the rate. I guess that is not right—they determine which formation it is in. Does Continental have the right to determine which formation gas can be produced from?

Mr. Head: No. I pointed out to you, the agreement

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specifically provides "nominations for the production shall be made by Louisiana Gas, or the purchaser of the gas."

Commissioner O'Connor: That includes nominations specifically?

Mr. Head: That includes all formations. The only thing Continental has control over, they won't produce it over the maximum efficient rate of flow, but as long as the allowable set by the Conservation Commission is within the M.E.R. of the well, Continental has no say-so over it at all. He has misconstrued the agreement honestly in that respect, and the agreement which is in the record will speak for itself.

Now, also, staff counsel is concerned about the fact that we require Continental to maintain a very high rate of deliverability from this field. He is concerned about the fact that Texas' Eastern said we don't want to confine ourselves and agree that we will take in accordance with a very specific rate of production. Obviously, we require that high deliverability and we are unwilling to commit ourselves to take in accordance with a specific rate of production, because we want the high deliverability for flexibility.

We want to be able to swing on this field, and that is the reason we require them to have a large amount of gas available for use at all times.

Commissioner Ross: I am just curious, why did you think this management agreement was not relevant to this proceeding,

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originally?

Mr. Head: Originally? I still don't really feel the Management Agreement is relevant, because it simply deals with the mechanics of operating the wells.

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But we, as owners of the leases—in other words, it could be with John Doe or anyone else you hired to operate the wells for you. It doesn't really affect the price or anything else.

As he points out, what we pay them under the management agreement, we get back under the reserved production payment. Again, we have answered most of what staff counsel has said in our brief, but I want to bring out one thing.

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Now, getting back to the other parties, the New York Public Service Commission and U.G.I. all say they are interested only in the cost to the consumer, or cost at the marketplace; yet they go back and say, "Give Texas Eastern a 20-cent price for the CATCO gas down here."

As we pointed out, CATCO gas, cost to the consumer and cost at the marketplace—

Commissioner O'Connor: You mean give Tennessee!

Mr. Head: All right. The cost of the CATCO gas on shore

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is 24 cents; that is what it costs the consumer. When you get up to Rayne, it is 27 or 28 cents. That is what CATCO costs the consumer they are interested in. Rayne is far below CATCO on a proper comparable basis.

I was most interested in the fact that the New York Commission and U.G.I. both apparently admit that at the time Texas Eastern purchased the Rayne field it was a prudent investment in the light of those circumstances, but for some reason they now feel because circumstances have changed, that Texas Eastern must be penalized.

Well, I submit it is a sound regulatory principle that a

prudent investment at the time it is made is what must be considered in fixing the rates of any public utility.

For example, if U.G.I. today builds a long pipeline, and it has to pay a high—or it pays today's price for that pipe—but next year pipe is reduced to one-half of that, certainly I think U.G.I. would want to earn on its reasonable and prudent investment for what it paid for that pipe today, not what the pipe is worth next year.

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Counsel for U.G.I. also pointed out that every case that has been remanded by the courts has resulted in hardships. It has resulted in hardship, but it has not resulted in confiscation. This Commission in reducing the rates to the Catco producers did not confiscate their property. This Commission found that under those rates the Catco producers would realize a reasonable return on their properties. Any condition in Texas Eastern's order which would require them to take less than the cost of the Rayne gas would obviously be confiscatory.

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DeGolyer and MacNaughton
5625 Daniels Avenue
Dallas, Texas

Federal Power Commission

Docket No. .....

Hearing Exhibit No. X-2

Witness .....

ESTIMATED RESERVES AND AVAILABILITY of RESIDUE GAS, CONDENSATE and PLANT LIQUIDS of TEXAS EASTERN TRANSMISSION CORPORATIO in the RAYNE FIELD, ACADIA PARISH, LOUISIANA as of JANUARY 1, 1961

ESTIMATED RESIDUE GAS, CONDENSATE and PLANT LIQUIDS RESERVES
of
TEXAS EASTERN TRANSMISSION CORPORATION
in the
RAYNE FIELD, ACADIA PARISH, LOUISIANA
as of
JANUARY 1, 1961

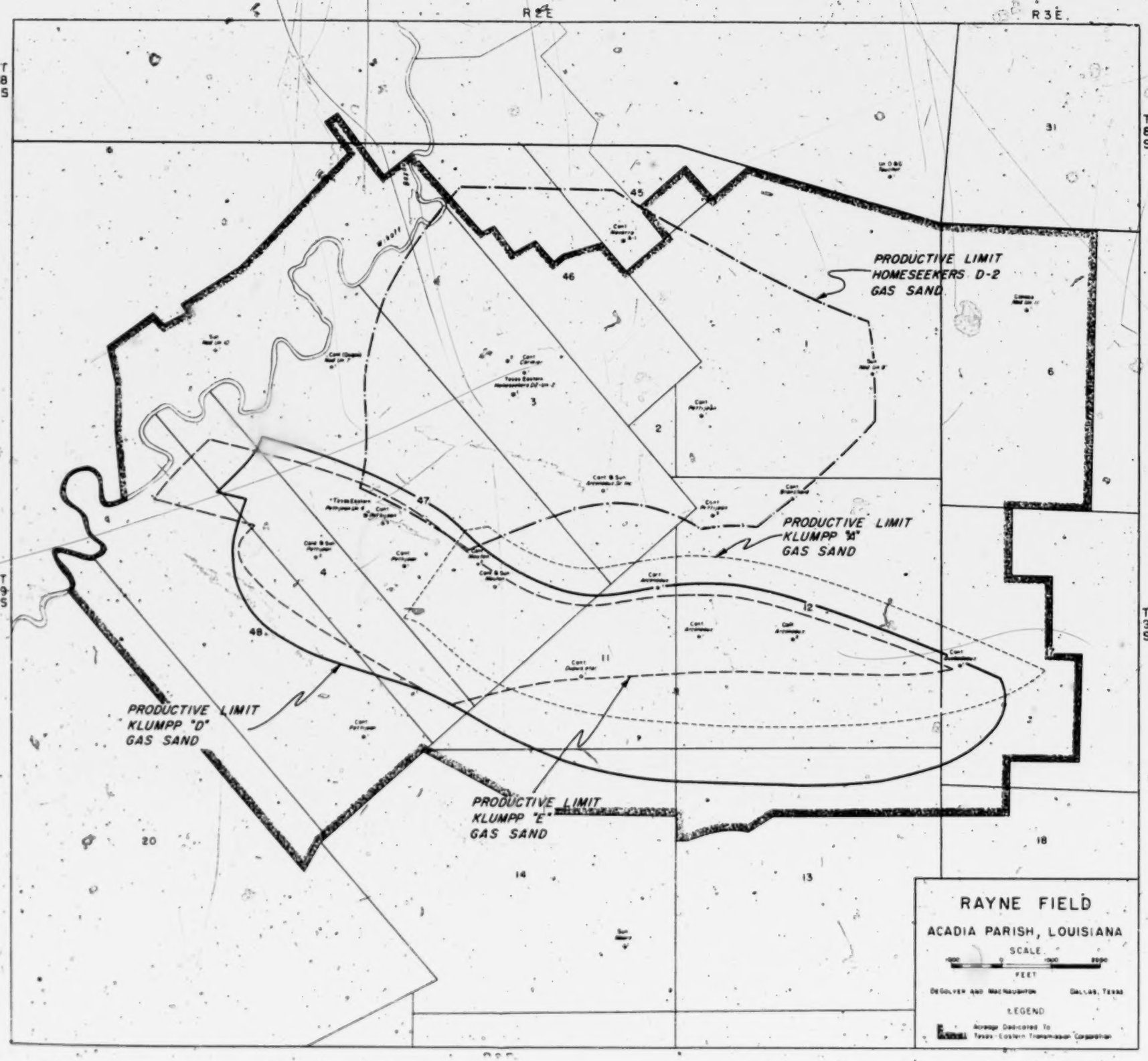
(All Volumes Expressed at 14.73 Psia Base Pressure and 60 Degrees Fahrenheit)

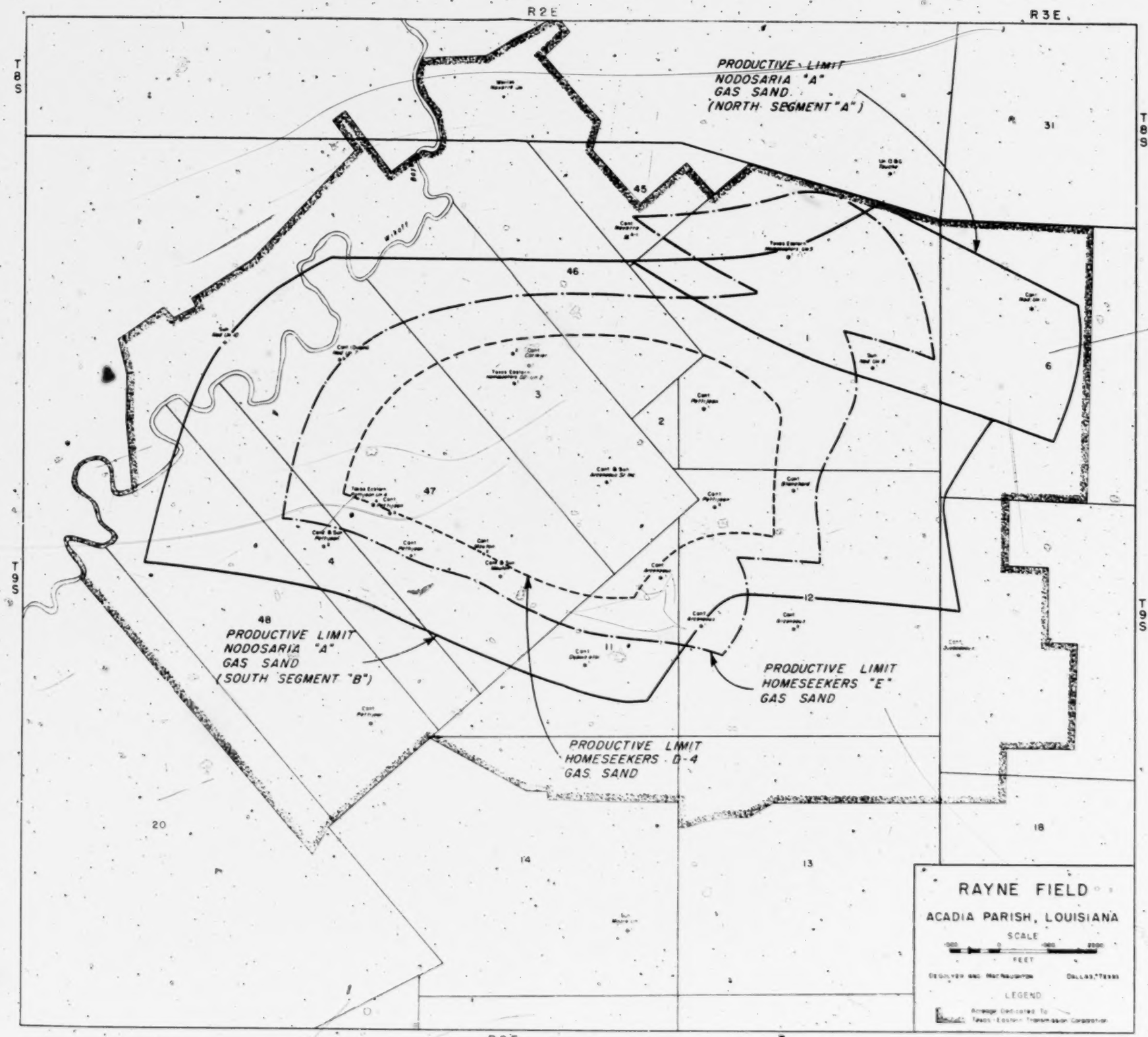
Line Number (a)	Item (b)	Units (c)	Klumpp "A" Sand (d)	Klumpp "D" Sand (e)	Klumpp "E" Sand (f)	Homeseekers "D-2" Sand (g)	Homeseekers "D-4" Sand (h)	Homeseekers "E" Sand (i)	Nodosaria North Seg. "A" (j)
1	Type of Gas		Non-Associated	Non-Associated	Non-Associated	Non-Associated	Non-Associated	Non-Associated	Non-Associated
2	Average Depth	Feet	10,740	11,250	11,360	11,790	12,190	12,620	13,700
3	Number of Well Completions		1	4	1	2	0	6	2
4	Estimated Productive Area	Acres	748	1,240	703	1,313	770	1,686	498
5	Estimated Average Thickness	Feet	13.2	29.4	11.3	12.0	8.8	73.9	78.9
6	Estimated Reservoir Volume	Acre-Feet	9,787	36,462	7,935	15,758	6,739	124,637	39,273
7	Estimated Average Porosity	Percent	23.8	21.8	24.9	24.8	24.7	24.6	20.5
8	Estimated Interstitial Water	Percent	34.0	22.5	22.7	30.0	30.0	19.0	14.9
9	Reservoir Temperature	Degrees, F.	222	230	232	239	245	252	269
10	Initial Reservoir Pressure	Psia	4,835	6,855	6,868	7,520	8,125	8,918	11,008
11	Terminal Reservoir Pressure	Psia	515	515	515	515	515	515	515
12	Compressibility Factor, Initial Conditions		0.990	1.150	1.145	1.215	1.262	1.310	1.465
13	Compressibility Factor, Terminal Conditions		0.962	0.965	0.965	0.964	0.968	0.973	0.975
14	Initial Gas in Place per Acre-Foot	Mcf	1,728	2,245	2,565	2,363	2,429	2,926	2,767
15	Terminal Gas in Place per Acre-Foot	Mcf	190	201	228	204	201	228	194
16	Estimated Initial Gas in Place	MMcf	16,912	81,857	20,353	37,236	16,369	364,688	108,668
17	Estimated Terminal Gas in Place	MMcf	1,860	7,329	1,809	3,215	1,355	28,417	7,619
18	Estimated Initial Recoverable Gas	MMcf	15,052	74,528	18,544	34,021	15,014	336,271	101,049
19	Estimated Cumulative Production to January 1, 1961	MMcf	0	7,783	0	1,877	0	26,412	6,901
20	Remaining Gas in Place on January 1, 1961	MMcf	16,912	74,074	20,353	35,359	16,369	338,276	101,767
21	Estimated Remaining Recoverable Gas	MMcf	15,052	66,745	18,544	32,144	15,014	309,859	94,148
22	Estimated Shrinkage Losses	MMcf	774	3,311	920	1,768	751	23,208	4,915
23	Estimated Residue Gas Reserves	MMcf	14,278	63,434	17,624	30,376	14,263	286,651	89,233
24	Reserves Dedicated by Texas Eastern								
25	Dedicated Acre-Feet		9,787	36,462	7,935	13,946	6,739	124,637	39,273
26	Percent of Total Reservoir		100.00	100.00	100.00	88.50	100.00	100.00	100.00
27	Residue Gas Reserve	MMcf	14,278	63,434	17,624	26,883	14,263	286,651	89,233
28	Estimated Remaining Condensate Reserves	Barrels	226,185	1,116,575	333,623	624,281	337,225	8,352,067	1,628,918
29	Estimated Remaining Plant Liquids Reserves	Barrels	197,533	763,200	220,915	408,924	257,772	6,767,991	984,574

ESTIMATED RESIDUE GAS, CONDENSATE and PLANT LIQUIDS RESERVES
of
TEXAS EASTERN TRANSMISSION CORPORATION
in the
RAYNE FIELD, ACADIA PARISH, LOUISIANA
as of
JANUARY 1, 1961

(All Volumes Expressed at 14.73 Psia Base Pressure and 60 Degrees Fahrenheit)

Klumpp "A" Sand (d)	Klumpp "D" Sand (e)	Klumpp "E" Sand (f)	Homeseekers "D-2" Sand (g)	Homeseekers "D-4" Sand (h)	Homeseekers "E" Sand (i)	Nodosaria "A" Sand North Seg. "A" (j)	Nodosaria "A" Sand South Seg. "B" (k)	Nodosaria "A" Sand Subtotal (l)	TOTAL (m)	Line Number (n)
Non-Associated	Non-Associated	Non-Associated	Non-Associated	Non-Associated	Non-Associated	Non-Associated	Non-Associated			1
10,740	11,250	11,360	11,790	12,190	12,620	13 700	13,640			2
1	4	1	2	0	6	2	7			3
743	1,240	703	1,313	770	1,686	498	2,423			4
13.2	29.4	11.3	12.0	8.8	73.9	78.9	80.2			5
9,787	36,462	7,935	15,758	6,739	124,637	39,273	194,230			6
23.8	21.8	24.9	24.8	24.7	24.6	20.5	20.5			7
34.0	22.5	22.7	30.0	30.0	19.0	14.9	14.9			8
222	230	232	239	245	252	269	268			9
4,835	6,855	6,868	7,520	8,125	8,918	11,008	10,972			10
515	515	515	515	515	515	515	515			11
0.990	1.150	1.145	1.215	1.262	1.310	1.465	1.460			12
0.962	0.965	0.965	0.964	0.968	0.973	0.975	0.975			13
1,728	2,245	2,565	2,363	2,429	2,926	2,767	2,767			14
190	201	228	204	201	228	194	195			15
16,912	81,857	20,353	37,236	16,369	364,688	108,668	537,434	646,102	1,183,517	16
1,860	7,329	1,809	3,215	1,355	28,417	7,619	37,875	45,494	89,479	17
15,052	74,528	18,544	34,021	15,014	336,271	101,049	499,559	600,608	1,094,038	18
0	7,783	0	1,877	0	26,412	6,901	39,441	46,342	82,414	19
16,912	74,074	20,353	35,359	16,369	338,276	101,767	497,993	599,760	1,101,103	20
15,052	66,745	18,544	32,144	15,014	309,859	94,148	460,118	554,266	1,011,624	21
774	3,311	920	1,768	751	23,208	4,915	47,806	52,721	83,453	22
14,278	63,434	17,624	30,376	14,263	286,651	89,233	412,312	501,545	928,171	23
										24
9,787	36,462	7,935	13,946	6,739	124,637	39,273	194,230			25
100.00	100.00	100.00	88.50	100.00	100.00	100.00	100.00			26
14,278	63,434	17,624	26,883	14,263	286,651	89,233	412,312	501,545	924,678	27
226,185	1,116,575	333,623	624,281	337,225	8,352,067	1,628,918	16,967,482	18,596,400	29,586,356	28
197,533	763,200	220,915	408,924	257,772	6,767,991	984,574	12,211,943	13,196,517	21,812,852	29


R2E
R3E
T8S
T9S
PRODUCTIVE LIMIT
HOMESEEKERS D-2
GAS SAND
PRODUCTIVE LIMIT
KLUMPP "A"
GAS SAND
PRODUCTIVE LIMIT
KLUMPP "D"
GAS SAND
PRODUCTIVE LIMIT
KLUMPP "E"
GAS SAND
RAYNE FIELD
ACADIA PARISH, LOUISIANA
SCALE
FEET
DEGOLYER AND MACNAUGHTON
DALLAS, TEXAS
LEGEND
Acreage Dedicated To
Texas Eastern Transmission Corporation


R2E
R3E
T8S
T9S
PRODUCTIVE LIMIT
NODOSARIA "A"
GAS SAND
(NORTH SEGMENT "A")
48
PRODUCTIVE LIMIT
NODOSARIA "A"
GAS SAND
(SOUTH SEGMENT "B")
PRODUCTIVE LIMIT
HOMESEEKERS "E"
GAS SAND
PRODUCTIVE LIMIT
HOMESEEKERS D-4
GAS SAND
RAYNE FIELD
ACADIA PARISH, LOUISIANA
SCALE
FEET
LEGEND

3751

Exhibit No. X-3
Dockets Nos. G-12446 and G-12447
Order dated July 14, 1961,
paragraph (B)(3)

TEXAS EASTERN TRANSMISSION CORPORATION

PROPOSED METHOD OF ACCOUNTING RAYNE FIELD

FEDERAL POWER COMMISSION
Docket No. G-12446 et al.

Hearing Exhibit No. X-3

Date Identified 10-23-61
Date Admitted 12-7-61

Texas Eastern Transmission Corporation proposes the following method of accounting for the Rayne Field transaction and all costs incident thereto:

1. Texas Eastern will charge to Account 101—Gas Plant in Service the cost of producing leaseholds, producing gas wells, and structures and equipment related thereto.

2. Texas Eastern will charge to Account 404.1—Amortization and Depletion of Producing Natural Gas Land and Land Rights and will credit Account 111.1—Reserve for Amortization and Depletion of Producing Natural Gas Land and Land Rights with the depletion of natural gas producing leaseholds and amortization of intangible drilling costs on the unit-of-production basis.

3. Texas Eastern will charge Account 403—Depreciation Expense and will credit Account 108—Reserve for Depreciation of Gas Plant in Service with the depreciation of tangible producing plant on a unit-of-production basis.

4. Texas Eastern will charge Account 186—Miscellaneous Deferred Debits and credit Account 131—Cash with the payment of the notes over the period of 15⅔ years.

5. Texas Eastern will charge Account 404.1—Amortization and Depletion of Producing Natural Gas Land and Land Rights and credit Account 186—

Miscellaneous Deferred Debits with the amortization of note payments over the life of the Rayne Field reserves on unit-of-production basis.

6. Texas Eastern will credit Account 400—Operating Revenues with the revenue received from the sale of liquids after the production payment has been satisfied.

7. Texas Eastern will charge to Accounts 401—Operation Expense and 402—Maintenance Expense the cost of operating the Rayne Field after the completion of the production payments.

Years 1961 through 1989

Docket Nos. G-12440 and G-12447
Order Dated July 14, 1961, Paragraph (B)(4)

Line No.	(A) Year	(B) Depletion of Gas Reserve	(C) Depreciation of Tangible Plant	(D) Depletion of Nat'l Gas Prod. Leaseholds	(E) Amortization of Intangible Drilling Costs	(F) Net Liquids Revenues	(G) Total Cost of Gas	(H) Cost Per MCF
1	1961	$ 6,492,600	$ 258,300	$ 439,700	$ 26,000	$ ——	$ 7,216,600	17.31¢
2	1962	6,492,600	261,900	439,700	26,000	——	7,220,200	17.32
3	1963	6,492,600	293,000	439,700	57,100	——	7,282,400	17.47
4	1964	6,492,600	293,000	439,700	57,100	——	7,282,400	17.47
5	1965	6,492,600	293,000	439,700	57,100	——	7,282,400	17.47
6	1966	6,492,600	293,000	439,700	57,100	——	7,282,400	17.47
7	1967	6,492,600	293,000	439,700	57,100	——	7,282,400	17.47
8	1968	6,492,600	293,000	439,700	57,100	——	7,282,400	17.47
9	1969	6,492,600	293,000	439,700	57,100	——	7,282,400	17.47
10	1970	6,492,600	293,000	439,700	57,100	(900)	7,281,500	17.47
11	1971	6,492,600	293,000	439,700	57,100	(1,000)	7,281,400	17.47
12	1972	6,492,600	328,100	439,700	92,300	(49,300)	7,303,400	17.52
13	1973	6,492,600	374,800	439,700	133,500	(80,800)	7,359,800	17.65
14	1974	5,736,400	333,900	388,400	117,900	(76,300)	6,500,300	17.65
15	1975	4,772,100	277,700	323,200	98,100	(1,674,200)	3,796,900	12.39
16	1976	4,136,700	240,800	280,100	85,100	(1,638,500)	3,104,200	11.69
17	1977	3,582,300	221,600	242,600	104,200	(1,337,000)	2,813,700	12.23
18	1978	2,954,500	196,200	200,000	117,300	(1,021,500)	2,446,500	12.90
19	1979	2,580,600	171,400	174,700	102,500	(887,800)	2,141,400	12.92
20	1980	2,097,100	149,400	142,000	106,900	(659,400)	1,836,000	13.63
21	1981	1,772,400	153,900	120,000	154,700	(568,200)	1,632,800	14.35
22	1982	1,471,300	145,900	99,600	170,100	(421,100)	1,465,800	15.51
23	1983	901,800	99,700	61,100	128,800	(116,300)	1,075,100	18.57
24	1984	755,900	83,500	51,200	108,000	(181,900)	816,700	16.83
25	1985	626,200	69,200	42,400	89,400	(129,200)	698,000	17.36
26	1986	570,400	63,000	38,600	81,500	(91,100)	662,400	18.08
27	1987	511,700	56,600	34,700	73,100	(51,600)	624,500	19.00
28	1988	324,700	35,900	22,000	46,400	(36,000)	393,000	18.85
29	1989	289,100	31,900	19,600	41,100	(9,100)	372,600	20.09
	Totals	$117,487,000	$6,190,700	$7,956,300	$2,416,800	$(9,031,200)	$125,019,600	16.57¢

NOTE: In addition to the above costs, the Rayne Field leases obligate Texas Eastern to account to the royalty owners for the royalty portion of the gas on the basis of the market value at the well as and when produced and saved. Texas Eastern will also be obligated to account to the State of Louisiana for production or severance taxes imposed on the working interest gas.

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Hearing Exhibit No. X-5

TEXAS EASTERN TRANSMISSION CORPORATION

ESTIMATED RESIDUE GAS PRODUCTION
RAYNE FIELD
ACADIA PARISH, LOUISIANA
1961 THRU 1989

Year	Annual Production (MMCF)
1961	51,100
1962	51,100
1963	51,100
1964	51,100
1965	1,100
1966	51,100
1967	51,100
1968	51,100
1969	51,100
1970	51,100
1971	51,100
1972	51,100
1973	51,100
1974	45,148
1975	37,558
1976	32,557
1977	28,194
1978	23,254
1979	20,311
1980	16,505
1981	13,949
1982	11,580
1983	7,098
1984	5,950
1985	4,928
1986	4,490
1987	4,028
1988	2,555
1989	2,273
Total	924,678

FEDERAL POWER COMMISSION
Docket No. G-12446

Hearing Exhibit No. X-5

Date Identified 10-23-61
Date Admitted 12-7-61

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TEXAS EASTERN TRANSMISSION CORPORATION

RAYNE FIELD, ACADIA PARISH, LOUISIANA
COST OF NEW WELLS
(Non-Recoverable From Liquid Revenues)

	No. of Wells		Cost of Wells		
Year	Dual Compl.	Single Compl.	Tangible	Intangible	Total
1962	2	0	$ 500,000	$ 500,000	$1,000,000
1971	1	0	250,000	250,000	500,000
1972	1	0	250,000	250,000	500,000
Total	4	0	$1,000,000	$1,000,000	$2,000,000

Tangible 50%
Intangible 50%

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TEXAS EASTERN TRANSMISSION CORPORATION

RAYNE FIELD, ACADIA PARISH, LOUISIANA
COST OF WELL WORKERS

	Tangible		Intangible		
Year	Recoverable	Non-Recoverable	Recoverable	Non-Recoverable	Total
1962	$ 21,300	$—	$ 49,700	$—	$ 71,000
1963	22,500	—	52,500	—	75,000
1967	22,500	—	52,500	—	75,000
1971	22,493	7	52,484	16	75,000
1972	22,153	347	51,689	811	75,000
Total	$110,946	$354	$258,873	$827	$371,000

Tangible 30%
Intangible 70%

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TEXAS EASTERN TRANSMISSION CORPORATION

RAYNE FIELD, ACADIA PARISH, LOUISIANA
TUBING REPLACEMENT COSTS

	Tangible		Intangible		
Year	Recoverable	Non-Recoverable	Recoverable	Non-Recoverable	Total
1968	$ 22,500	$ —	$ 52,500	$ —	$ 75,000
1969	90,000	—	210,000	—	300,000
1970	157,463	37	367,415	85	525,000
1971	179,945	55	419,871	129	600,000
1976	—	67,500	—	157,500	225,000
1977	—	67,500	—	157,500	225,000
1979	—	45,000	—	105,000	150,000
1980	—	112,500	—	262,500	375,000
1981	—	67,500	—	157,500	225,000
1982	—	45,000	—	105,000	150,000
Total	$449,908	$405,092	$1,049,786	$945,214	$2,850,000

Tangible 30%
Intangible 70%

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TEXAS EASTERN TRANSMISSION CORPORATION

RAYNE FIELD, ACADIA PARISH, LOUISIANA
COST OF TIE-IN FACILITIES

Year	Tangible		
	Recoverable	Non-Recoverable	Total
1962	$180,000	$ —	$180,000
1971	89,972	28	90,000
1972	88,611	1,389	90,000
Total	$358,583	$1,417	$360,000

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TEXAS EASTERN TRANSMISSION CORPORATION

RAYNE FIELD, ACADIA PARISH, LOUISIANA
COST OF LOW PRESSURE GATHERING SYSTEM

Year	Total[1]
1964	$125,000
1965	125,000
1966	125,000
1967	125,000
1968	50,000
Total	$550,000

[1] All Costs Tangible and Recoverable.

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TEXAS EASTERN TRANSMISSION CORPORATION

RAYNE FIELD, ACADIA PARISH, LOUISIANA
COST OF FIELD COMPRESSION FACILITIES

Year	Recoverable	Non-Recoverable	Total
1964	$ 300,000	$ —	$ 300,000
1966	300,000	—	300,000
1968	1,500,000	—	1,500,000
1972	2,067,556	32,444	2,100,000
1973	583,948	16,052	600,000
Total	$4,751,504	$48,496	$4,800,000

Tangible 100%

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TEXAS EASTERN TRANSMISSION CORPORATION

RAYNE FIELD, ACADIA PARISH, LOUISIANA
WELL OPERATING COSTS AND MAINTENANCE

Year	Recoverable	Non-Recoverable	Total
1961	$ 383,040	$ —	$ 383,040
1962	383,040	—	383,040
1963	455,040	—	455,040
1964	455,040	—	455,040
1965	455,040	—	455,040
1966	455,040	—	455,040
1967	455,040	—	455,040
1968	396,000	—	396,000
1969	396,000	—	396,000
1970	395,909	91	396,000
1971	395,879	121	396,000
1972	425,324	6,676	432,000
1973	455,477	12,523	468,000
1974	453,969	14,031	468,000
1975	75,662	392,338	468,000
1976	—	468,000	468,000
1977	—	468,000	468,000
1978	—	468,000	468,000
1979	—	450,000	450,000
1980	—	450,000	450,000
1981	—	396,000	396,000
1982	—	378,000	378,000
1983	—	378,000	378,000
1984	—	216,000	216,000
1985	—	216,000	216,000
1986	—	216,000	216,000
1987	—	216,000	216,000
1988	—	180,000	180,000
1989	—	180,000	180,000
Total	$6,035,500	$5,105,780	$11,141,280

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TEXAS EASTERN TRANSMISSION CORPORATION

RAYNE FIELD, ACADIA PARISH, LOUISIANA
COMPRESSOR OPERATING COSTS

Year	Recoverable	Non-Recoverable	Total
1964	$ 15,000	$ —	$ 15,000
1965	15,000	—	15,000
1966	30,000	—	30,000
1967	30,000	—	30,000
1968	105,000	—	105,000
1969	105,000	—	105,000
1970	104,977	23	105,000
1971	104,968	32	105,000
1972	206,759	3,241	210,000
1973	233,581	6,419	240,000
1974	218,254	6,746	225,000
1975	29,100	150,900	180,000
1976	—	165,000	165,000
1977	—	150,000	150,000
1978	—	120,000	120,000
1979	—	105,000	105,000
1980	—	90,000	90,000
1981	—	75,000	75,000
1982	—	60,000	60,000
1983	—	45,000	45,000
1984	—	45,000	45,000
1985	—	30,000	30,000
1986	—	30,000	30,000
1987	—	30,000	30,000
1988	—	15,000	15,000
1989	—	15,000	15,000
Total	$1,197,639	$1,142,361	$2,340,000

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TEXAS EASTERN TRANSMISSION CORPORATION

Revenues From Sale of Condensate Attributable to Texas Eastern's Net Interest in Production

Year	Gross Condensate Barrels	Texas Eastern's Net Interest in Production (81.58729%)					
		During Production Payments		After Production Payments		Total	
		Barrels	Value	Barrels	Value	Barrels	Value
1961	2,267,589	1,850,064	$ 5,550,192	—	$ —	1,850,964	$ 5,550,192
1962	2,603,050	2,123,758	6,371,274	—	—	2,123,758	6,371,274
1963	2,251,350	1,836,815	5,510,445	—	—	1,836,815	5,510,445
1964	2,053,050	1,675,028	5,025,084	—	—	1,675,028	5,025,084
1965	2,049,050	1,671,764	5,015,292	—	—	1,671,764	5,015,292
1966	1,874,150	1,529,068	4,587,204	—	—	1,529,068	4,587,204
1967	1,774,785	1,447,999	4,343,997	—	—	1,447,999	4,343,997
1968	1,688,700	1,377,765	4,133,295	—	—	1,377,765	4,133,295
1969	1,588,700	1,296,177	3,888,531	—	—	1,296,177	3,888,531
1970	1,408,500	1,148,892	3,446,676	265	795	1,149,157	3,447,471
1971	1,270,800	1,036,493	3,109,479	318	954	1,036,811	3,110,433
1972	1,282,425	1,030,127	3,090,381	16,169	48,507	1,046,296	3,138,888
1973	1,244,978	988,568	2,965,704	27,176	81,528	1,015,744	3,047,232
1974	1,081,877	856,211	2,568,633	26,463	79,389	882,674	2,648,022
1975	878,444	115,868	347,604	600,831	1,802,493	716,699	2,150,097
1976	754,783	—	—	615,807	1,847,421	615,807	1,847,421
1977	650,427	—	—	530,666	1,591,998	530,666	1,591,998
1978	534,480	—	—	436,068	1,308,204	436,068	1,308,204
1979	478,334	—	—	390,260	1,170,780	390,260	1,170,780
1980	398,385	—	—	325,032	975,096	325,032	975,096
1981	344,119	—	—	280,757	842,271	280,757	842,271
1982	284,168	—	—	231,845	695,535	231,845	695,535
1983	182,670	—	—	149,036	447,108	149,036	447,108
1984	152,767	—	—	124,638	373,914	124,638	373,914
1985	126,881	—	—	103,519	310,557	103,519	310,557
1986	114,957	—	—	93,790	281,370	93,790	281,370
1987	102,581	—	—	83,693	251,079	83,693	251,079
1988	76,390	—	—	62,325	186,975	62,325	186,975
1989	67,966	—	—	55,452	166,356	55,452	166,356
Total	29,586,356	19,984,597	$59,953,791	4,154,110	$12,462,330	24,138,707	$72,416,121

TEXAS EASTERN TRANSMISSION CORPORATION

Revenues From Sale of Plant Liquids
Attributable to Texas Eastern's Net Interest in Production

Year	Gross Plant Liquids Barrels	Texas Eastern's Net Interest in Production (81.58729%)						60% of Net Interest in Production					
		During Production Payments		After Production Payments		Total		During Production Payments		After Production Payments		Total	
		Barrels	Value	Barrels	Value	Barrels	Value	Barrels	Value	Barrels	Value	Barrels	Value
1961	1,260,193	1,028,157	$ 1,740,670	-	$ -	1,028,157	$ 1,740,670	616,894	$ 1,044,402	-	$ -	616,894	$ 1,044,402
1962	1,402,058	1,143,901	1,936,624	-	-	1,143,901	1,936,624	686,341	1,161,974	-	-	686,341	1,161,974
1963	1,255,318	1,024,180	1,733,937	-	-	1,024,180	1,733,937	614,508	1,040,362	-	-	614,508	1,040,362
1964	1,224,298	998,872	1,691,090	-	-	998,872	1,691,090	599,323	1,014,654	-	-	599,323	1,014,654
1965	1,265,245	1,032,279	1,747,648	-	-	1,032,279	1,747,648	619,367	1,048,589	-	-	619,367	1,048,589
1966	1,256,693	1,025,302	1,735,836	-	-	1,025,302	1,735,836	615,181	1,041,502	-	-	615,181	1,041,502
1967	1,325,112	1,081,123	1,830,341	-	-	1,081,123	1,830,341	648,674	1,098,205	-	-	648,674	1,098,205
1968	1,302,588	1,062,746	1,799,230	-	-	1,062,746	1,799,230	637,648	1,079,538	-	-	637,648	1,079,538
1969	1,271,464	1,037,353	1,756,239	-	-	1,037,353	1,756,239	622,412	1,053,743	-	-	622,412	1,053,743
1970	1,166,264	951,304	1,610,558	219	371	951,523	1,610,929	570,782	966,335	131	223	570,913	966,558
1971	1,086,172	885,907	1,499,840	271	459	886,178	1,500,299	531,544	899,904	163	275	531,707	900,179
1972	1,084,566	871,198	1,474,938	13,670	23,144	884,868	1,498,082	522,719	884,963	8,202	13,886	530,921	898,849
1973	1,108,567	880,253	1,490,268	24,197	40,966	904,450	1,531,234	528,152	894,161	14,518	24,580	542,670	918,741
1974	981,687	776,904	1,315,298	24,012	40,651	800,916	1,355,949	466,142	789,179	14,407	24,391	480,549	813,570
1975	812,785	107,208	181,503	555,921	941,175	663,129	1,122,678	64,325	108,902	333,553	564,705	397,878	673,607
1976	709,443	-	-	578,815	979,934	578,815	979,934	-	-	347,289	587,960	347,289	587,960
1977	617,685	-	-	503,952	853,191	503,952	853,191	-	-	302,371	511,915	302,371	511,915
1978	507,377	-	-	413,955	700,826	413,955	700,826	-	-	248,373	420,496	248,373	420,496
1979	453,899	-	-	370,324	626,959	370,324	626,959	-	-	222,194	376,175	222,194	376,175
1980	378,579	-	-	308,872	522,920	308,872	522,920	-	-	185,323	313,752	185,323	313,752
1981	327,515	-	-	267,211	452,388	267,211	452,388	-	-	160,327	271,433	160,327	271,433
1982	269,252	-	-	219,675	371,910	219,675	371,910	-	-	131,805	223,146	131,805	223,146
1983	165,234	-	-	134,810	228,233	134,810	228,233	-	-	80,886	136,940	80,886	136,940
1984	137,186	-	-	111,926	189,491	111,926	189,491	-	-	67,156	113,695	67,156	113,695
1985	114,030	-	-	93,034	157,507	93,034	157,507	-	-	55,820	94,504	55,820	94,504
1986	103,153	-	-	84,160	142,483	84,160	142,483	-	-	50,496	85,490	50,496	85,490
1987	92,042	-	-	75,095	127,136	75,095	127,136	-	-	45,057	76,282	45,057	76,282
1988	71,160	-	-	58,058	98,292	58,058	98,292	-	-	34,835	58,975	34,835	58,975
1989	63,307	-	-	51,650	87,443	51,650	87,443	-	-	30,990	52,466	30,990	52,466
Total	21,812,852	13,906,687	$23,544,020	3,889,827	$6,585,479	17,796,514	$30,129,499	8,344,012	$14,126,413	2,333,896	$3,951,289	10,677,908	$18,077,702

TEXAS EASTERN TRANSMISSION CORPORATION

Revenues From Sale of Plant Liquids
Attributable to Texas Eastern's Net Interest in Production

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TEXAS EASTERN TRANSMISSION CORPORATION

RAYNE FIELD, ACADIA PARISH, LOUISIANA
PRODUCTION PAYMENT TERMINATION DATES

Conoco, et al	February 1975
Dishman, et al	April 1973
Muller	January 1972
Kirby	July 1972
Texas Gas	March 1970

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TEXAS EASTERN TRANSMISSION CORPORATION

RAYNE FIELD, ACADIA PARISH, LOUISIANA
DETERMINATION OF PERCENTAGE INTERESTS BASED ON TOTAL RESERVES

	MCF	%
Conoco, et al	783,498,900	79.14129
Dishman, et al	7,817,000	9.78960
Muller	11,006,700	1.11179
Kirby	5,144,100	0.51961
Texas Gas	247,500	0.02500
Total Working Interest	807,714,200	81.58729
Other Interests	182,285,800	18.41271
Total Rayne Field	990,000,000	100.0%

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TEXAS EASTERN TRANSMISSION CORPORATION

Rayne Field, Acadia Parish, Louisiana
Compressor Fuel and Gas For Field Use

	During Production Payments		After Production Payments		Total	
Year	MCF	Value	MCF	Value	MCF	Value
1964	88,000	$ 14,960	—	$ —	88,000	$ 14,9
1965	88,000	14,960	—	—	88,000	14,9
1966	175,000	29,750	—	—	175,000	29,7
1967	175,000	29,750	—	—	175,000	29,7
1968	613,000	104,210	—	—	613,000	104,2
1969	613,000	104,210	—	—	613,000	104,2
1970	612,860	104,186	140	24	613,000	104,2
1971	612,812	104,178	188	32	613,000	104,2
1972	1,207,058	205,200	18,942	3,220	1,226,000	208,4
1973	1,364,492	231,964	37,508	6,376	1,402,000	238,3
1974	1,274,606	216,683	39,394	6,697	1,314,000	223,3
1975	169,916	28,886	881,084	149,784	1,051,000	178,6
1976	—	—	964,000	163,880	964,000	163,8
1977	—	—	876,000	148,920	876,000	148,9
1978	—	—	701,000	119,170	701,000	119,1
1979	—	—	613,000	104,210	613,000	104,2
1980	—	—	526,000	89,420	526,000	89,4
1981	—	—	438,000	74,460	438,000	74,4
1982	—	—	350,000	59,500	350,000	59,5
1983	—	—	263,000	44,710	263,000	44,7
1984	—	—	263,000	44,710	263,000	44,7
1985	—	—	175,000	29,750	175,000	29,7
1986	—	—	175,000	29,750	175,000	29,7
1987	—	—	175,000	29,750	175,000	29,7
1988	—	—	88,000	14,960	88,000	14,9
1989	—	—	88,000	14,960	88,000	14,9
Total	6,993,744	$1,188,937	6,672,256	$1,134,283	13,666,000	$2,323,2

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Exhibit No. X-6
Witness: John P. Furman

UNITED STATES OF AMERICA FEDERAL POWER COMMISSION

Docket Nos. G-12446, et al.

In the Matters of

TEXAS EASTERN TRANSMISSION CORPORATION, et al.

EXHIBIT ACCOMPANYING TESTIMONY OF JOHN P. FURMAN

FEDERAL POWER COMMISSION
Docket No. G-12446 et al.

Hearing Exhibit No. X-6

Date Identified 10-23-61
Date Admitted 12-7-61

FOSTER ASSOCIATES, INC.
Washington, D. C.

October 1961

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Purchaser / Filing Company (a)	Rate Sch. No. (or Docket Number) (b)	Date of Contract (c)	Field (d)	Parish (e)	Term (Yrs) (f)	Pt. of Del. (g)	Price Adjustment Clause (h)	Take or Pay (i)	Maximum Delivery Pressure (j)	Annual Volume (MMcf) (15.025) (k)	Initial Base Price (¢/Mcf) (15.025) (l)	Average Base Price (¢/Mcf) (15.025) (m)	Initial Base Price Plus Tax (¢/Mcf) (15.025) (n)	Average Base Price Plus Tax (¢/Mcf) (15.025) (o)
HOPE NATURAL GAS COMPANY														
California Co., The	14	10/17/58	S. Bosco	Acadia	20	F	R	Yes	1,100	3,106.8	21.50	23.5	23.55	25.55
Callery Properties, Inc. et al.	G-17341	12/16/58	W. Rayne	Acadia	20	F	NR	NR	NR	NR	21.50	23.5	23.55	25.55
Continental Oil Co.	171	12/15/58	W. Rayne	Acadia	20	F	R	Yes	1,100	396.0	21.50	23.5	23.55	25.55
Tidewater Oil Co.	89	12/12/58	W. Rayne	Acadia	20	F	R	Yes	1,100	781.2	21.50	23.5	23.55	25.55
* Tidewater Oil Co.	91	12/12/58	S. Bosco	Acadia*	20	F	R	Yes	1,100	145.2	21.50	23.5	23.55	25.55
TEXAS GAS TRANSMISSION CORPORATION														
Cheyenne Oil Corp. of Delaware (Op.), et al.	2	8/15/58	Grand Coulee	Acadia	20	P	R	Yes	1,000	337.1	17.00	18.8	18.75	20.55
Texas National Petroleum Co. (Op.), et al.	6	1/30/59	Grand Coulee	Acadia	20	F	None	Yes	1,000	17.8	16.75	18.6	18.50	20.35
TRANSCONTINENTAL GAS PIPE LINE CORPORATION														
Jefferson Lake Sulphur (Op.), et al	2	1/7/58	N. Ellis	Acadia	Life	F	FN	Yes	1,000	157.2	16.00	17.9	17.50	19.40
UNITED FUEL GAS COMPANY														
Midwest Oil Corp. (Op.), et al.	14	12/29/58	Ellis	Acadia	20	F	R	Yes	1,000	937.9	17.60	20.3	19.10	21.80
Midwest Oil Corp. (Op.), et al.	15	12/29/58	Branch	Acadia	20	F	R	Yes	1,000	583.7	17.60	20.3	19.10	21.80
* Midwest Oil Corp. (Op.), et al.	20*	6/4/59	Ellis	Acadia	*	F	R	Yes	1,000	900.0	17.60	19.3	19.10	20.80
UNITED GAS PIPE LINE COMPANY														
* Carter, Reese E. (Op.), et al.	1	11/24/58	Maxie*	Acadia	20	P	R	No	1,000	611.7	18.50	20.7	20.25	22.45
Cities Service Petroleum Co.	106	1/2/58	S. Lewisburg	Acadia	20	F	R	Yes	1,000	192.0	18.50	20.7	20.25	22.45
Hudson Gas & Oil Corp., et al.	3	5/9/58	N.W. Branch	Acadia	20	F	R	No	1,000	262.5	18.50	20.7	20.25	22.45
Hunt Oil Co.	42	7/29/58	S. Mermentau	Acadia	20	P	R	No	1,000	397.3	18.50	20.7	20.25	22.45
Samedan Oil Corp. (Op.), et al.	4	1/16/59	Estherwood	Acadia	20	F	R	Yes	1,000	987.1	18.50	20.7	20.25	22.45
Sohio Petroleum Co.	42	1/16/58	S. Lewisburg	Acadia	20	F	R	Yes	1,000	1,500.0	18.50	20.7	20.25	22.45
Tidewater Oil Co.	71	5/5/58	Midland	Acadia	20	W	R	Yes	1,000	804.0	18.50	20.6	20.25	22.35
TEXAS GAS TRANSMISSION CORPORATION														
* Hunt, H. L.	18*	3/11/58	N. Elton*	Allen	20	P	R	Yes	1,000	6.7*	17.00	19.5	18.75	21.25

Source notes appear on page 12.
Footnotes appear on page 14.

Purchaser Filing Company (a)	Rate Sch. No. (or Docket Number) (b)	Date of Contract (c)	Field (d)	Parish (e)	Term (Yrs) (f)	Pt. of Del. (g)	Price Adjustment Clause (h)	Take or Pay (i)	Maximum Delivery Pressure (j)	Annual Volume (MMcf) (15.025) (k)	Initial Base Price (¢/Mcf) (15.025) (l)	Average Base Price (¢/Mcf) (15.025) (m)	Initial Base Price Plus Tax (¢/Mcf) (15.025) (n)	Average Base Price Plus Tax (¢/Mcf) (15.025) (o)
TRANSCONTINENTAL GAS PIPE LINE CORPORATION														
Beck Oil Co., et al.	1	11/15/58	Reeves	Allen	20	F	None	No	1,000	221.4	16.00	16.0	16.00	16.00
UNITED GAS PIPE LINE COMPANY														
Bel Oil Corp., et al.	6	8/1/58	Pilgrim Church	Allen	20	F	R	No	1,000	720.0	18.50	20.7	20.38	22.58
Hunt, H. L. (Op.), et al.	19	7/7/58	Pilgrim Church	Allen	20	F	R	No	1,000	398.4	18.50	20.7	20.38	22.58
Hunt Oil Co. (Op.), et al.	41	7/7/58	Castor Creek	Allen	20	F	R	No	1,000	361.9	18.50	20.7	20.38	22.58
Sands, Caroline Hunt	2	6/24/58	N.W. Oberlin	Allen	20	F	R	No	1,000	516.4	18.50	20.7	20.38	22.58
TRANSCONTINENTAL GAS PIPE LINE CORPORATION														
Austral Oil Co., Inc.	3	12/30/58	Sorrento	Ascension	20	F	None	Yes	1,000	651.8	21.50	25.8	23.55	27.85
Brown, George R., et al.	5	12/30/58	Sorrento	Ascension	20	F	None	Yes	1,000	651.8	21.50	25.8	23.55	27.85
Humble Oil & Refining Co.	152	1/15/59	Sorrento	Ascension	20	F	None	Yes	1,000	474.7	21.50	25.8	23.55	27.85
COASTAL TRANSMISSION CORPORATION														
Irwin & Bess	1	6/24/59	Napoleonville	Assumption	20	F	None	Yes	1,000	157.7	18.00	19.8	19.75	21.55
TEXAS GAS TRANSMISSION CORPORATION														
Frankel, J. R.	3	3/30/59	E. Lake Palourde	Assumption	20	F	R	Yes	1,000	193.5	20.00	23.7	21.75	25.45
UNITED GAS PIPE LINE COMPANY														
Pan American Petroleum Corp.	228	7/25/58	Napoleonville	Assumption	20	F	R	No	1,000	277.5	18.50	20.6	20.00	22.10
TRANSCONTINENTAL GAS PIPE LINE CORPORATION														
* Hunt, H. L., et al.	25*	4/17/59*	Bear	Beauregard	20	F	None	Yes	1,000	14.3	21.50*	25.9*	23.55*	27.95
Hunt, H. L., et al.	29	4/17/59	Bear	Beauregard	20	F	None	Yes	1,000	24.0	21.50	25.9	23.55	27.95
* Jameson, F. E., et al.	2*	4/8/59	Bear	Beauregard	20	F	None	Yes	1,000	211.3	21.50	25.9	23.55*	27.95
* Mound Co., et al.	15*	3/7/58	Cowpen Creek	Beauregard	*	F	FN	Yes	1,000	438.1	16.00	17.9	17.75	19.65
* Shell Oil Co. (Op.), et al.	198*	3/3/59	Bear	Beauregard	20	F	None	Yes	1,000	1,030.7	21.50	25.9	23.55*	27.95
TRUNKLINE GAS COMPANY														
Cunningham, James M. (Op.), et al.	2	11/4/58	Oretta	Beauregard	21	F	None	Yes	1,000	345.7	16.60	18.6	18.10	20.10
* Lyons, C. H., Jr., et al.	4*	10/30/58	Ragley	Beauregard	*	F	FN	Yes	1,000	420.0	16.40	18.2	17.90	19.70
Penton, E. Doyle & Penton, D. N. d/b/a Penton & Penton (Op.), et al.	1	7/8/58	S. Bearhead Creek	Beauregard	22	F	None	Yes	1,000	249.8	16.40	18.6	17.90	20.10
Petroleum, Inc. (Op.), et al.	13	11/3/58	Various	Beauregard	21	F	None	No	1,000	901.2	16.60	18.6	18.10	20.10
Socony Mobil Oil Co., Inc.	159	3/27/58	NR	Beauregard	21	F	FN	Yes	1,000	192.0	16.40	18.4	17.90	19.90
Socony Mobil Oil Co., Inc.	165	7/7/58	Cowpen Creek	Beauregard	20	F	None	No	1,000	127.2	16.40	17.9	17.90	19.40
Texas Gulf Producing Co.	28	2/7/58	S.E. Fulton	Beauregard	20	F	FN	Yes	1,000	360.0	16.40	18.3	17.90	19.80

Footnotes appear on page 14.

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Purchaser / Filing Company (a)	Rate Sch. No. (or Docket Number (b)	Date of Contract (c)	Field (d)	Parish (e)	Term (Yrs) (f)	Pt. of Del. (g)	Price Adjustment Clause (h)	Take or Pay (i)	Maximum Delivery Pressure (j)	Annual Volume (MMcf) (15.025) (k)	Initial Base Price (¢/Mcf) (15.025) (l)	Average Base Price (¢/Mcf) (15.025) (m)	Initial Base Price Plus Tax (¢/Mcf) (15.025) (n)	Average Base Price Plus Tax (¢/Mcf) (15.025) (o)
UNITED GAS PIPE LINE COMPANY														
* Union Oil Co. of California	30*	4/20/59	Gordon	Beauregard	20	F	R	No	800	898.2	18.50	20.0	20.25*	21.75
COASTAL TRANSMISSION CORPORATION														
W. W. F. Oil Corp. (Op.), et al.	1	5/1/59	E. Buhler	Calcasieu	20	F	None	Yes	1,000	90.0	20.00	21.7	22.00	23.70
UNITED GAS PIPE LINE COMPANY														
Chance, R. L., Sr. (Op.), et al.	1	11/10/58	NR	Calcasieu	20	F	None	No	1,000	282.0	14.00	15.5	15.50	17.00
* General Crude Oil Co.	7*	6/5/58	Coward's Gully	Calcasieu*	20	F	None	No	1,000	372.0*	17.00	18.5	18.75	20.25
* Gulf Oil Corp. (Op.), et al.	161*	7/9/58	Hayes	Calcasieu*	20	W	R	No	800	4,815.0	20.50	21.8	22.80*	24.10
* Shell Oil Co. (Op.)	203*	4/30/59	Iowa	Calcasieu*	20	F	R	Yes	1,000	7,568.0	18.50	21.4	20.55*	23.45
AMERICAN LOUISIANA PIPE LINE COMPANY														
Fifteen Oil Co.	2	1/1/59	E. Cheniere Perdue	Cameron	20	W	FN,R	Yes	1,050	495.1	18.25	22.0	19.75	23.50
Humble Oil & Refining Co.	140	6/2/58	Cheniere Perdue	Cameron	20	F	FN,R	Yes	1,050	360.1	18.25	22.0	19.75	23.50
Humble Oil & Refining Co.	156	4/24/59	E. Cheniere Perdue	Cameron	20	F	FN,R	Yes	1,050	742.8	18.25	22.0	19.75	23.50
Kerr-McGee Oil Industries, Inc.	61	7/31/58	Big Lake	Cameron	20	F	FN,R	Yes	1,050	661.0	18.25	22.8	19.75	24.30
Pan American Petroleum Corp.	248	1/10/58	Big Lake	Cameron	21	F	FN,R	Yes*	1,050	7,545.5	18.25	22.7	19.75	24.20
Tidewater Oil Co.	74	7/10/58	Second Bayou	Cameron	Life	F	FN,R	Yes	1,100	90.0	18.00	22.1	19.75	23.60
Tidewater Oil Co.	82	12/31/58	N. Holly Beach	Cameron	Life	F	FN,R	Yes	1,100	100.4	18.00	22.3	19.50	23.80
HOPE NATURAL GAS COMPANY														
Ocean Drlg. & Exploration Co.	1	10/23/58	Block 4, E. Cameron Area	Cameron (Offshore)	20	W	R	Yes	1,200	2,752.8	21.50	23.5	23.55	25.55
* Phillips Petroleum Co., et al.	355*	11/14/58	Block 33, W. Cameron Area	Cameron (Offshore)	20	W	R	Yes	1,200	17,304.0*	21.50	23.5	23.55	25.55
* Sands, Caroline Hunt, et al.	5	8/13/58	S. Thornwell	Cameron*	20	F	R	Yes	1,100	312.0	21.50	23.5	23.55	25.55
Socony-Mobil Oil Co., Inc.	203	11/4/58	Block 4, E. Cameron Area	Cameron (Offshore)	20	F	R	Yes	1,200	765.6	21.50	23.5	23.55	25.55
TENNESSEE GAS TRANSMISSION CORPORATION														
Continental Oil Co.	165	12/31/58	E. Cameron	Cameron	19	W	None	Yes	1,000	810.0	21.40	25.1	22.90	26.60
Newmont Oil Co.	4	12/30/58	E. Cameron	Cameron	19	F	None	Yes	1,000	270.0	21.40	25.1	22.90	26.60
Shell Oil Co.	180	5/8/58	Block 192, W. Cameron Area	Cameron (Offshore)	20	F	None	Yes	1,000	15,783.2	21.40	25.3	23.15	27.05
Socony Mobil Oil Co., Inc.	177	12/12/58	E. Cameron	Cameron	19	F	None	Yes	1,000	2,521.2	21.40	25.3	22.90	26.80

Footnotes appear on page 14.

Purchaser / Filing Company (a)	Rate Sch. No. (or Docket Number) (b)	Date of Contract (c)	Field (d)	Parish (e)	Term (Yrs) (f)	Pt. of Del. (g)	Price Adjustment Clause (h)	Take or Pay (i)	Maximum Delivery Pressure (j)	Annual Volume (MMcf) (15.025)	Initial Base Price (¢/Mcf) (15.025) (l)	Average Base Price (¢/Mcf) (15.025) (m)	Initial Base Price Plus Tax (¢/Mcf) (15.025) (n)	Average Base Price Plus Tax (¢/Mcf) (15.025) (o)
TEXAS GAS TRANSMISSION CORPORATION														
Gulf Oil Corp.	152	9/26/58	Grand Lake Area	Cameron	20	F	None	Yes	1,000	342.4	17.00	18.8	18.75	20.55
TRUNKLINE GAS COMPANY														
Union Oil Co. of California	41	6/17/58	Block 67, W. Cameron Area	Cameron (Offshore)	23	W	None	Yes	1,200	5,021.1	22.00	26.3	22.00	26.30
UNITED FUEL GAS COMPANY														
Humble Oil & Refining Co.	145	9/24/58	Go Around Bayou	Cameron	20	F	FN,R	Yes	1,000	339.7	17.60	20.2	19.10	21.70
Kerr-McGee Oil Industries, Inc. (Op.), et al.	60	9/24/58	Go Around Bayou	Cameron	20	F	FN,R	Yes	1,000	552.7	17.60	20.2	19.10	21.70
Shell Oil Co.	177	5/13/58	E. Cameron	Cameron	20	F	FN,R	Yes	1,000	7,839.6	17.60	20.8	19.10	22.30
COASTAL TRANSMISSION CORPORATION														
* Amerada Petroleum Corp.	82	3/23/59	Lake Chicot	Iberia*	20	F	R	Yes	1,000	1,080.0	21.50	25.3	23.55	27.35
* Phillips Petroleum Co.	372	3/23/59	Lake Chicot	Iberia*	20	F	R	Yes	1,000	2,511.6	21.50	25.9	23.55	27.95
HOPE NATURAL GAS COMPANY														
Callery Properties, Inc., et al.	2	12/10/58	Bayou Pigeon	Iberia	20	F	R	Yes	1,100	1,488.0	21.50	23.5	23.55	25.55
Continental Oil Co.	174	12/15/58	Bayou Pigeon	Iberia	20	F	R	Yes	1,100	432.0	21.50	23.5	23.55	25.55
Humble Oil & Refining Co.	167	12/9/58	Bayou Pigeon	Iberia	20	F	R	Yes	1,100	372.0	21.50	23.5	23.55	25.55
Kilroy Properties, Inc. et al.	3	12/8/58	Bayou Pigeon	Iberia	20	F	R	Yes	1,100	744.0	21.50	23.5	23.55	25.55
Ocean Drilling & Exploration Co. (Op.), et al.	2	12/13/58	Bayou Pigeon	Iberia	20	F	R	Yes	1,100	1,260.0	21.50	23.5	23.55	25.55
Pan American Petroleum Corp.	266	12/16/58	Jefferson Island	Iberia	21	F	R	Yes	1,100	409.2	21.00	23.0	23.05	25.05
* Richardson, Sid W., et al. d/b/a Richardson & Bass (Op.), et al.	2	10/17/58	Jefferson Island*	Iberia*	21	F	R	Yes	1,100	2,098.8	21.00	23.1	23.05	25.15
Shell Oil Co.	215	11/25/58	Bayou Pigeon	Iberia	20	F	R	Yes	1,100	5,022.0	21.50	23.5	23.55	25.55
Tidewater Oil Co.	90	12/2/58	Jefferson Island	Iberia	21	F	R	Yes	1,100	114.0	21.00	23.1	23.05	25.15
Union Oil Co. of California	38	12/16/58	Bayou Pigeon	Iberia	20	F	R	Yes	1,100	1,440.0	21.50	23.5	23.55	25.55
SOUTHERN NATURAL GAS COMPANY														
* California Co., The	13*	8/1/58	N. Bayou Long	Iberia	20	F	FN,R	Yes	1,100	852.9	21.50	25.5	23.68	27.68

Footnotes appear on pages 14 and 15.

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Purchaser / Filing Company (a)	Rate Sch. No (or Docket Number) (b)	Date of Contract (c)	Field (d)	Parish (e)	Term (Yrs) (f)	Pt. of Del. (g)	Price Adjustment Clause (h)	Take or Pay (i)	Maximum Delivery Pressure (j)	Annual Volume (MMcf) (15.025) (k)	Initial Base Price (¢/Mcf) (15.025) (l)	Average Base Price (¢/Mcf) (15.025) (m)	Initial Base Price Plus Tax (¢/Mcf) (15.025) (n)	Average Base Price Plus Tax (¢/Mcf) (15.025) (o)
SOUTHERN NATURAL GAS COMPANY														
Continental Oil Co.	166	12/16/58	Bayou Pigeon	Iberia	20	F	R	Yes	1,000	689.3	21.50	25.5	23.68	27.68
* Continental Oil Co	172*	4/30/59	Bayou Long	Iberia*	*	F	R	Yes	1,100	45.3	21.50	25.7	23.68	27.88
Continental Oil Co.	175	10/27/58	N. Bayou Long	Iberia	20	F	R	Yes	1,100	35.7	21.50	25.5	23.68	27.68
UNITED GAS PIPE LINE COMPANY														
* Shell Oil Co. (Op.), et al.	206*	4/30/59	Weeks Island	Iberia*	20	F	R	Yes	1,000	19,680.9	21.50	23.0	23.55 *	25.05
COASTAL TRANSMISSION CORPORATION														
Continental Oil Co.	G-20242	6/26/59	Thompson Bluff	Jefferson Davis	20	F	NR	NR	NR	180.0	20.00	24.3	22.18	26.48
HOPE NATURAL GAS COMPANY														
* Bel Oil Corp.	7	9/23/58	S. Thornwell	Jefferson Davis*	20	F	R	Yes	1,100	450.0	21.50	23.5	23.55	25.55
TEXAS GAS TRANSMISSION CORPORATION														
* Moore, Homer T.	1	3/5/59	Welsh	Jefferson Davis	20	F	None	Yes	1,000	12.0	12.00	13.9	13.75 *	15.65
TRANSCONTINENTAL GAS PIPE LINE CORPORATION														
Pan American Petroleum Corp.	242	10/21/58	Lake Arthur	Jefferson Davis	21	F	None	Yes	1,000	3,492.8	21.50	25.8	23.55	27.85
UNITED GAS PIPE LINE COMPANY														
Delta Drilling Co.	26	3/27/59	Mermenteau	Jefferson Davis	20	F	R	No	1,000	641.5	17.00	18.5	18.50	20.00
Texaco Inc.	194	3/10/59	Welsh	Jefferson Davis	20	F	R	No	1,000	518.1	18.50	20.7	20.25	22.45
TRANSCONTINENTAL GAS PIPE LINE CORPORATION														
* Gulf Oil Corp.	163*	12/30/58	S. E. Rayne	Lafayette	Life	F	FN	Yes	1,000	45.6	16.00	18.0	17.50	19.50
* Tidewater Oil Co.	85*	2/26/59	S.E. Rayne	Lafayette	Life	F	FN	Yes	1,000	270.0	16.00	18.0	17.50	19.50
UNITED GAS PIPE LINE COMPANY														
* Crown Central Petroleum Corp.	7	9/22/58	N. Leroy	Lafayette*	20	F	O,R	Yes	1,025	168.0	20.50	22.0	22.25	23.75
* Monsanto Chemical Co. (Op.), et al.	28	4/1/58	Broussard	Lafayette*	20	F	R	No	1,000	751.6	18.50	20.7	20.25	22.45
* Tidewater Oil Co.	75	8/15/58	Ridge	Lafayette*	20	F	O,R	Yes	1,000	18.0	20.50	22.0	22.25	23.75
SOUTHERN NATURAL GAS COMPANY														
* Hunt, H. L.	30	4/2/58	Coffee Bay	Lafourche	20	F	R	Yes	1,000	6,558.8	20.50*	24.5*	22.55*	26.55

Footnotes appear on page 15.

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Purchaser / Filing Company (a)	Rate Sch. No. (or Docket Number) (b)	Date of Contract (c)	Field (d)	Parish (e)	Term (Yrs) (f)	Pt. of Del. (g)	Price Adjustment Clause (h)	Take or Pay (i)	Maximum Delivery Pressure (j)	Annual Volume (MMcf) (15.025) (k)	Initial Base Price (c/Mcf) (15.025) (l)	Average Base Price (c/Mcf) (15.025) (m)	Initial Base Price Plus Tax (c/Mcf) (15.025) (n)	Average Base Price Plus Tax (c/Mcf) (15.025) (o)
TENNESSEE GAS TRANSMISSION COMPANY														
Kerr-McGee Oil Industries, Inc.	55	7/1/58	Bully Camp	Lafourche	20	F	FN,R	Yes	1,000	207.1	17.00	19.3	18.75	20.80
Pan American Petroleum Corp.	226	4/4/58	Bully Camp	Lafourche	20	F	FN,R	Yes	1,000	1,631.3	17.00	19.2	18.50	20.70
* Sinclair Oil & Gas Co. (Op.), et al.	167	7/17/58	Timbalier Bay	Lafourche*	20	F	FN,R	Yes	1,000	15.0	17.00	19.3	18.50	20.80
* Sohio Petroleum Co.	50*	7/17/58	Timbalier Bay	Lafourche	*	F	FN,R	Yes	1,000	19.2	17.00	19.3	18.50	20.80
TRANSCONTINENTAL GAS PIPE LINE CORPORATION														
Barnhart, Paul F.	16	3/2/59	Thibodaux	Lafourche	20	F	None	Yes	1,000	1,639.8	21.50	25.8	23.55	27.85
* Cities Service Production Co. (Op.), et al.	7*	9/4/58	Chegby	Lafourche*	22	F	None	Yes	1,000	573.7	21.50	26.0	23.55	28.05
Frankel, R. R.	2	6/20/58	Chegby	Lafourche	22	F	R	Yes	1,000	635.9	21.50	26.2	23.30	28.00
Humble Oil & Refining Co.	130	2/11/58	Thibodaux	Lafourche	21	F	None	Yes	1,000	2,658.4	21.50	25.6	23.30	27.40
Humble Oil & Refining Co.	131	2/11/58	Rousseau	Lafourche	20	F	None	Yes	1,000	1,748.8	21.50	25.5	23.30	27.30
* Hunt Oil Co.	50*	4/30/59	Thibodaux	Lafourche	*	F	None	Yes	1,000	26.2	21.50	25.8	23.55	27.85
Republic Natural Gas Co., et al.	23	9/2/58	Raceland	Lafourche	20	F	None	Yes	1,000	619.9	21.50	25.7	23.55	27.75
* Sword Co., et al.	1*	2/16/59	Raceland	Lafourche	*	F	None	Yes	1,000	313.4	21.50	25.8	23.55	27.55
UNITED FUEL GAS COMPANY														
Drew Petroleum, Inc. (Op.), et al.	1	7/23/58	Valentine	Lafourche	20	F	None	Yes	1,100	190.9	16.00	16.0	17.50	17.50
UNITED GAS PIPE LINE COMPANY														
Humble Oil & Refining Co.	158	4/20/59	Chacahoula	Lafourche	20	F	R	Yes	1,000	4,957.3	21.50	25.5	23.55	27.55
* Pan American Petroleum Corp.	227	4/30/58	Bourg	Lafourche*	20	F	R	Yes	1,200	545.7	18.50	20.6	20.00	22.10
SOUTHERN NATURAL GAS COMPANY														
Bateman, Earl G., d/b/a Bateman Drilling Co. (Op.), et al.	4	4/11/58	Felice Bayou	Plaquemines	20	F	R	Yes	1,000	618.3	19.00	23.0	20.75	24.75
Callery, Francis A. (Op.), et al.	15	2/1/58	Coquille Bay	Plaquemines	20	F	None	Yes	1,000	187.7	19.00	20.5	20.75	22.25
Hunt Oil Co.	40	4/2/58	Triumph	Plaquemines	20	F	R	Yes	1,000	181.6	21.50	25.5	23.55	27.55
Texaco Inc.	186	4/10/58	Felice Bayou	Plaquemines	20	F	R	Yes	1,000	309.1	19.00	23.0	20.50	24.50
TENNESSEE GAS TRANSMISSION COMPANY														
Gulf Oil Corp.	170	6/26/59	Lake Washington	Plaquemines	20	F	FN,R	Yes	1,000	840.0	21.30	25.1	23.60	27.40
Humble Oil & Refining Co.	163	5/18/59	Block 30, W. Delta Area	Plaquemines (Offshore)	20	F	FN,R	Yes	1,000	2,880.0	21.30	25.2	23.60	27.50
Humble Oil & Refining Co.	164	5/18/59	Lake Washington	Plaquemines	20	F	FN,R	Yes	1,000	2,520.0	21.30	25.1	23.60	27.40

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TENNESSEE GAS TRANSMISSION COMPANY														
Humble Oil & Refining Co.	165	5/18/59	S. E. Pass	Plaquemines	20	F	FN,R	Yes	1,000	5,400.0	21.30	25.1	23.60	27.40
Hunt, Hassie, Trust	24	6/30/59	Block 24, S. Pass Area	Plaquemines (Offshore)	20	F	FN,R	Yes	1,000	540.0	21.30	25.1	23.60	27.40
Placid Oil Co.	24	3/3/59	Lake Washington	Plaquemines	20	F	FN,R	Yes	1,000	9,672.0	21.30	25.0	23.60	27.30
Rimrock Tidelands, Inc., et al.	6	5/25/59	Block 31, S. Pass Area	Plaquemines (Offshore)	20	F	FN,R	Yes	1,000	360.0	17.00	19.5	18.50	21.00
Shell Oil Co.	216	6/26/59	Lake Washington	Plaquemines	20	F	FN,R	Yes	1,000	360.0	21.30	25.1	23.60	27.40
Shell Oil Co.	61-104	6/29/59	Block 30, W. Delta Area	Plaquemines (Offshore)	20	F	FN,R	NR	NR	1,800.0	21.30	25.2	21.30	25.20
TRANSCONTINENTAL GAS PIPE LINE CORPORATION														
Humble Oil & Refining Co.	128	2/11/58	Lucy	St. Charles	20	F	None	Yes	1,000	577.6	21.50	25.5	23.30	27.30
Humble Oil & Refining Co.	129	2/11/58	Lac des Allemands	St. Charles	20	F	None	Yes	1,000	3,549.2	21.50	25.5	23.30	27.30
* Republic Natural Gas Co., et al.	31	4/3/59	Lucy	St. Charles*	22	F	R	Yes	1,000	281.9	21.50	26.2	23.55	28.25
Hurley Oil & Gas Co. (Op.), et al.	8	1/18/59	Vacherie	St. James	20	W	None	Yes	1,000	325.4	21.00	23.1	23.05	25.15
McDermott, J. Ray & Co., Inc.	9	12/30/58	Vacherie	St. James	20	F	None	Yes	1,000	640.8	21.00	23.2	23.05	25.25
Union Texas Natural Gas Corp.	9	1/7/58	Lower Vacherie	St. James	22	F	None	Yes	1,000	1,881.3	21.50	26.0	23.55	28.05
COASTAL TRANSMISSION CORPORATION														
British-American Oil Producing Co., The	38	1/30/59	Shuteson	St. Landry	20	F	FN,R	Yes	1,000	2,232.0	20.00	24.3	22.48	26.48
UNITED FUEL GAS COMPANY														
Gulf Interstate Oil Co.	2	3/23/58	Savoy	St. Landry	20	F	None	Yes	1,000	360.0	17.20	20.7	18.70	21.60
UNITED GAS PIPE LINE COMPANY														
* Humble Oil & Refining Co.	136	5/22/58	American Island*	St. Martin	20	F	R	Yes	1,000	313.6	21.20	22.6	22.95	24.35
Ohio Oil Co., The	39	7/11/58	American Island	St. Martin	20	F	R	Yes	1,000	16.8	21.20	22.6	22.95	24.35
* Shell Oil Co. (Op.), et al.	207*	4/30/59	W. Lake Verret	St. Martin	20	F	R	Yes	1,000	3,389.0	21.50	23.0	23.55	25.05
Shell Oil Co.	213	6/29/59	Bell River	St. Martin	20	F	R	Yes	1,000	1,440.0	21.50	23.0	23.55	25.05
Trice Production Co.	8	9/22/58	St. Martinville	St. Martin	20	F	None	No	1,000	302.4	18.50	20.3	20.00	22.30

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TENNESSEE GAS TRANSMISSION COMPANY														
* Shell Oil Co.	220	6/29/59	Atchafalaya Bay	St. Mary*	20	F	FN,R	Yes	1,000	1,800.0	21.30	25.1	23.60	27.40
Texaco Inc.	187	9/7/58	Atchafalaya Bay	St. Mary	20	F	FN,R	Yes	1,000	870.2	17.00	19.3	18.50	20.80
TEXAS GAS TRANSMISSION CORPORATION														
* Southwest Gas Producing Co., Inc. (Op.), et al.	12*	6/18/58	Jeanerette	St. Mary	20	F	R	Yes	1,000	4,822.5*	19.00	20.8	20.75	22.55
UNITED GAS PIPE LINE COMPANY														
Atlantic Refining Co., The	197	4/9/59	Jeanerette	St. Mary	20	W	R	Yes	1,000	5,788.9	20.50	24.3	22.80	26.60
Atlantic Refining Co., The	204	4/1/59	Bayou Sale	St. Mary	Life	F	R	Yes	1,000	6,100.8	20.00	23.8	22.30	26.10
* Humble Oil & Refining Co.	148*	6/15/58	Yellow Bayou	St. Mary	20	F	R	No	1,000	3,872.3*	21.50	25.5	23.55	27.55
Shell Oil Co.	212	5/1/59	Cote Blanche Island	St. Mary	20	F	R	Yes	1,000	1,488.0	21.50	23.0	23.55	25.05
Sun Oil Co.	114	5/1/58	Belle Isle	St. Mary	20	F	R	Yes	1,050	14,630.4	21.50	26.1	23.80	28.40
TENNESSEE GAS TRANSMISSION COMPANY														
Placid Oil Co.	27	3/19/59	Caillou Island	Terrebonne	21	O	FN,R	Yes	1,000	450.0	21.30	25.2	23.60	27.50
TRANSCONTINENTAL GAS PIPE LINE CORPORATION														
Cities Service Production Co.	9	1/2/58	S. Bourg	Terrebonne	20	F	None	Yes	1,000	30.2	21.50	25.8	23.55	27.85
Cities Service Production Co.	G-14355	1/2/58	Willow Woods	Terrebonne	20	F	NR	NR	NR	NR	21.50	25.5	23.00	27.00
* Hunt, Hassie, Trust	22*	6/19/59	N.W. Mosquito Bay*	Terrebonne	20	W	None	Yes	1,000	633.4*	21.50	25.9	23.55	27.95
Kerr-McGee Oil Industries, Inc.	69	11/14/58	Block 28 & 32, Ship Shoal Area	Terrebonne (Offshore)	22	W	None	Yes	1,000	6,750.0	22.00	26.4	22.00	26.40
Pan American Petroleum Corp.	G-17417	11/14/58	Ship Shoal Area	Terrebonne (Offshore)	22	F	NR	NR	NR	NR	22.00	26.4	24.05	28.45
Phillips Petroleum Co.	342	11/14/58	Block 32, Ship Shoal Area	Terrebonne (Offshore)	22	W	None	Yes	1,000	744.0	22.00	26.4	24.05	28.45
* Shell Oil Co.	200	3/23/59	Humphreys*	Terrebonne	20	F	None	Yes	1,000	3,160.6	21.50	25.9	23.55	27.95
Shell Oil Co.	208	3/6/59	Mosquito Bay	Terrebonne	20	F	None	Yes	1,000	375.2	21.50	25.9	23.55	27.95
Southern Natural Gas Co., Joint Venture	1	11/14/58	Block 28, Ship Shoal Area	Terrebonne (Offshore)	22	W	None	Yes	1,000	11,250.0	22.00	26.4	22.00	26.40

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TRANSCONTINENTAL GAS PIPE LINE CORPORATION														
Sunray Mid-Continent Oil Co. (Op.), et al.	183	2/12/58	Pointe Au Fer	Terrebonne	20	F	None	Yes	1,000	1,726.9	21.50	25.5	23.55	27.55
Tidewater Oil Co.	80	1/8/58	S. Bourg	Terrebonne	20	F	None	Yes	1,000	172.7	21.50	25.5	23.55	27.55
Union Oil Co. of California	25	1/10/58	Willow Woods	Terrebonne	20	F	None	Yes	1,000	82.4	21.50	26.0	23.30	27.80
UNITED GAS PIPE LINE COMPANY														
Argo Oil Corp.	38	12/10/58	Sunrise	Terrebonne	20	F	R	Yes	1,050	1,036.7	20.00	21.5	22.05	23.55
California Co., The	11	7/21/58	Bayou Penchant	Terrebonne	20	F	R	Yes	1,000	7,316.1	21.50	25.4	23.80	27.70
Freeport Oil Co.	1	6/13/58	Sunrise	Terrebonne	20	W	R.	Yes	1,050	44.4	20.00	21.5	22.05	23.55
Humble Oil & Refining Co.	149	12/5/58	N.E. Gibson	Terrebonne	20	F	R	No	1,000	1,458.1	18.50	20.8	20.25	22.55
Lyons & Logan (Op.), et al.	9	3/1/58	Gibson	Terrebonne	20	F	R	No	1,000	696.1	18.50	20.7	20.25	22.45
Mecom, John W.	7	7/9/58	Sunrise	Terrebonne	20	W	R	Yes	1,050	44.4	20.00	21.5	22.05	23.55
* Petroleum, Inc. (Op.), et al.	14*	12/23/58	Houma	Terrebonne	20	F	R	Yes	1,000	222.1*	18.50	20.7	20.25	22.45
Placid Oil Co.	20	2/5/59	Lapeyrouse	Terrebonne	18	F	None	No	1,200	1,511.7	18.50	20.8	20.25	22.55
Prentice, Robert B., et al.	2	5/14/59	Hollywood	Terrebonne	20	F	R	Yes	1,150	1,725.9	18.50	20.7	20.25	22.45
* Prentice, Robert B. (Op.), et al.	3*	5/14/59	Houma	Terrebonne	20	F	None	No	1,100	996.1	21.50	25.9	23.25*	27.45
Prentice, Robert B. (Op.), et al.	4	10/28/58	Hollywood	Terrebonne	20	F	R	No	1,150	928.8	18.50	20.7	20.25	22.45
* Shell Oil Co. (Op.), et al.	202*	5/1/59	Gibson	Terrebonne	20	F	R	Yes	1,000	6,137.3	21.25	22.8	23.30*	24.85
* Shell Oil Co.	204*	4/30/59	S. Houma	Terrebonne	20	F	R	Yes	1,200	1,890.1	21.50	23.0	23.55*	25.05
* Shell Oil Co.	205*	4/30/59	Turtle Bayou	Terrebonne	20	F	R	Yes	1,000	24,474.9	21.50	23.0	23.55*	25.05
Shell Oil Co.	214	5/1/59	N. Turtle Bayou	Terrebonne	20	F	R	Yes	1,000	4,172.7	21.50	23.0	23.55	25.05
Shell Oil Co.	219	6/29/59	Bayou Chauvin	Terrebonne	20	F	R	Yes	1,000	360.0	21.50	23.0	23.55	25.05
Shell Oil Co.	223	6/29/59	Chauvin	Terrebonne	20	F	R	Yes	1,000	360.0	21.50	23.0	23.55	25.05
Superior Oil Co., The	81	12/9/58	Sunrise	Terrebonne	20	F	R	Yes	1,050	2,555.9	20.00	21.5	22.05	23.55
* Superior Oil Co., The	89	9/8/58	Bayou Penchant	Terrebonne	20	F	R	Yes	1,200	20,347.8	21.50	25.7	23.80	28.00
Texaco Inc.	189	10/20/58	Lapeyrouse	Terrebonne	19	F	None	No	1,200	78.8	18.50	20.8	20.25	22.55
* Texas Gulf Producing Co.	31*	1/12/59	De Large	Terrebonne	22	F	R	Yes	1,200	1,517.1	20.00	21.6	22.05*	23.65
* Texas Gulf Producing Co.	32*	1/12/59	Dulac	Terrebonne	22	F	R	Yes	1,200	507.8	20.00	21.6	22.05*	23.65
Trahan, J. C., Drilling Contractor, Inc. (Op.) et al.	7	3/9/59	N. Turtle Bayou	Terrebonne	20	F	R	Yes	1,000	1,107.9	21.50	23.0	23.55	25.05
Trice Production Co. (Op.), et al.	10	12/10/58	Lake Hatch	Terrebonne	20	F	R	Yes	1,200	303.0	20.00	21.6	22.05	23.65
Trice Production Co.	12	6/16/59	Sunrise	Terrebonne	20	F	R	Yes	1,050	192.0	20.00	21.5	22.05	23.55
* Union Producing Co.*	228*	12/12/58	De Large	Terrebonne	20	F	R	Yes	1,200	1,517.0	20.00	21.5	22.05*	23.55
* Union Producing Co.*	229*	12/12/58	Dulac	Terrebonne	20	F	R	Yes	1,200	507.8	20.00	21.5	22.05*	23.55
* Union Producing Co.*	239*	11/4/58*	Hollywood	Terrebonne	20	F	R	Yes	1,150	811.2	18.50*	20.6*	20.25	22.35

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HOPE NATURAL GAS COMPANY														
Amerada Petroleum Corp.	84	11/7/58	Abbeville	Vermilion	20	F	R	Yes	1,100	270.0	21.00	23.0	23.05	25.05
Amerada Petroleum Corp.	85	11/7/58	Perry	Vermilion	20	F	R	Yes	1,100	360.0	21.50	23.5	23.55	25.55
Beck Oil Co., et al.	G-17402	11/26/58	Perry	Vermilion	20	F	NR	NR	NR	NR	21.50	23.5	23.55	25.55
Texas Gas Exploration Corp. (Op.), et al.	3	12/4/58	Perry	Vermilion	20	F	R	Yes	1,100	1,345.2	21.50	23.5	23.55	25.55
Tidewater Oil Co.	92	11/10/58	Perry	Vermilion	20	F	R	Yes	1,100	283.2	21.50	23.5	23.55	25.55
TRANSCONTINENTAL GAS PIPE LINE CORPORATION														
Huffington, Roy M., Inc. (Op.), et al.	1	5/18/59	S. Intracoastal City	Vermilion	20	F	None	Yes	1,000	856.4	21.00	25.0	22.80	26.80
McDermott, J. Ray & Co., Inc. (Op.), et al.	4	11/11/58	Bancker	Vermilion	20	F	None	Yes	1,000	451.3	17.00	18.5	19.05	20.55
Pure Oil Co., The	39	1/16/58	Vermilion Area	Vermilion (Offshore)	22	W	None	Yes	1,000	1,238.7	21.40	25.8	21.40	25.80
Superior Oil Co., The	78	9/17/58	Vermilion Area	Vermilion (Offshore)	22	W	None	Yes	1,200	9,583.4	21.40	25.9	21.40	25.90
Texaco Seaboard, Inc.	27	1/15/59	Bancker	Vermilion	20	F	None	Yes	1,000	48.1	17.00	18.5	19.05	20.55
Trice Production Co. (Op.), et al.	11	12/23/58	Bancker	Vermilion	20	F	None	Yes	1,000	459.9	17.00	18.5	19.05	20.55
Zapata Off-Shore Co. (Op.), et al.	1	4/7/59	Block 86, Vermilion Area	Vermilion (Offshore)	22	W	None	Yes	1,200	1,819.8	21.40	26.1	21.40	26.10
TRUNKLINE GAS COMPANY														
Austral Oil Co., Inc.	13	7/18/58	N. Freshwater Bayou	Vermilion	22	F	None	Yes	1,200	857.0	22.00	26.3	24.05	28.35
Nicklos Oil & Gas Co. (Op.), et al.	2	8/20/58	S.W. Esther	Vermilion	22	F	None	Yes	1,000	4,642.7	22.00	26.3	24.05	28.35
* Pan American Petroleum Corp.	258	6/26/58	Block 14, Vermilion Area*	Vermilion (Offshore)	22	W	None	Yes	1,200	6,458.3	22.00	26.3	24.05	28.35
Pan American Petroleum Corp.	259	9/2/58	Kaplan	Vermilion	22	W	None	Yes	1,200	726.1	22.00	26.3	24.05	28.35
Pan American Petroleum Corp.	260	9/2/58	N. Freshwater Bayou	Vermilion	22	W	None	Yes	1,200	857.0	22.00	26.3	24.05	28.35
Union Oil Co. of California	40	6/17/58	N. Freshwater Bayou	Vermilion	23	F	None	Yes	1,200	6,816.2	22.00	26.3	24.05	28.35
Union Oil Co. of California	42	6/17/58	Block 26, Vermilion Area	Vermilion (Offshore)	23	W	None	Yes	1,200	5,036.6	22.00	26.3	22.00	26.30
UNITED FUEL GAS COMPANY														
Humble Oil & Refining Co.	135	4/8/58	Florence	Vermilion	20	F	FN,R	Yes	1,000	2,536.6	17.20	20.2	18.70	21.70
* MPS Production Co., Inc., et al.	1*	7/17/58	Erath	Vermilion	*	F	R	Yes	1,000	471.7*	20.60	22.7	22.10	24.20
Pan American Petroleum Corp.	219	1/9/58	Erath	Vermilion	21	F	R	Yes	1,000	1,295.1	20.60	22.6	22.10	24.10
Pan American Petroleum Corp.	240	10/2/58	Florence	Vermilion	20	F	R	Yes	1,000	284.4	17.60	20.2	19.10	21.70

Footnotes appear on page 17.

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Purchaser Filing Company (a)	Rate Sch. No. (or Docket Number) (b)	Date of Contract (c)	Field (d)	Parish (e)	Term (Yrs) (f)	Pt. of Del. (g)	Price Adjustment Clause (h)	Take or Pay (i)	Maximum Delivery Pressure (j)	Annual Volume (MMcf) (15.025) (k)	Initial Base Price (¢/Mcf) (15.025) (l)	Average Base Price (¢/Mcf) (15.025) (m)	Initial Base Price Plus Tax (¢/Mcf) (15.025) (n)	Average Base Price Plus Tax (¢/Mcf) (15.025) (o)
UNITED GAS PIPE LINE COMPANY														
Kellerman, R. E.	1	10/15/58	Theall	Vermilion	20	F	R	No	1,025	105.0	18.50	20.7	20.25	22.45
McLean, Harvey	1	7/10/58	Theall	Vermilion	20	F	R	No	1,025	33.6	18.50	20.5	20.25	22.25
Sinclair Oil & Gas Co.	172	1/29/59	N. Leroy	Vermilion	20	F	R	Yes	1,025	540.0	20.50	22.2	22.25	23.95
Superior Oil Co., The	79	9/24/58	Theall	Vermilion	20	F	R	No	1,025	473.1	18.50	20.7	20.25	22.45
Texas Gulf Producing Co.	30	3/14/58	Abbeville	Vermilion	20	F	R	No	1,000	221.5	18.50	20.8	20.25	22.55
COASTAL TRANSMISSION CORPORATION														
Helis Petroleum Corp. (Op.), et al.	1	1/9/59	Port Allen	W. Baton Rouge	20	F	FN,R	Yes	1,000	180.0	18.00	19.8	19.75	21.55

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Source

This schedule includes contracts filed with the Federal Power Commission as rate schedules which cover the sale of natural gas to interstate pipelines in South Louisiana, are dated between January 1, 1958 and June 30, 1959, have a term of 15 years or longer (or life of reserves), and microfilmed by the C. D. Lockwood Company through June 30, 1961; Additional contracts filed as exhibits in certificate applications through September 1961 have also been included.

For the purpose of this exhibit, "South Louisiana" includes all parishes, including offshore areas, lying on or south of 31° North Latitude.

Contracts are arranged by parish and within parish by purchaser. The filing companies making sales from a particular parish to a particular purchaser are listed alphabetically.

Column Headings

In general the column headings are self-explanatory.

Column (a) shows the names of the purchaser and the company filing the contract with the Federal Power Commission.

Column (b) shows the filing company's rate schedule number. Where other filing companies have been identified as making sales under the contract, this is noted by a footnote. Where the given rate schedule supersedes an earlier contract previously filed as a rate schedule, the superseded rate schedule is identified in a footnote.

Column (c) shows the date of contract except that, in cases in which the price schedule has been revised by an amendment to the contract, the date of the amendment is shown. Such cases are identified by footnotes. If a contract ratifies a contract filed by another company, the date shown is the date of the ratification and the contract being ratified is identified by a footnote.

Under "Term of Contract," "Life" means life of reserves or plant, and a number, i.e. "20", shows the number of years for which the contract is written.

In column (g), showing point of delivery, "W" means wellhead or separator, "F" means a designated place in the field, "P" means a delivery of residue gas at the outlet of a plant, and "O" means a delivery point outside the field.

Column (h), headed "Price Adjustment Clause," shows whether the contract contains a clause which attempts to provide in whole or in part for adjustments in price in light of market conditions at the time of delivery. "FN" refers to a favored-nation clause which is operative throughout the life of the contract, "O" refers to any other type of adjustment clause which is operative throughout the life of the contract, and "R" refers to a clause which provides for redetermination of the price only after a specified period of years. One contract may contain clauses of more than one type.

In column (i), headed "Take or Pay", "Yes" means that there is provision in the contract for guarantee payment for a specified volume of gas, and "No" means that no provision for such payment is included in the cotract.

"Maximum Delivery Pressure" is the maximum pressure (in psig) at which the seller may have to make deliveries in order for the gas to enter the buyer's line. Where there is no specification in the contract or where the specification merely states a pressure sufficient to enter the buyer's line, a dash (—) is used in this column.

Column (k) shows 1960 volumes obtained from Form 2 reports of pipelines filed with the Federal Power Commission. For contracts where no 1960 deliveries were made, volume is based on estimated first-month deliveries as reported by producers at the time the contract was filed.

The "Initial Base Price" (column (l)) is as shown in the base price schedule as applicable at the date of the contract shown in column (c) (or at the date of an amendment revising the price schedule where this is the date shown in column (c)). Accordingly, this price includes no adjustment for tax reimbursement or for other reasons.

The "Average Base Price" (column (m)) is an average of the separate prices specified in the contract base price schedule over the duration of the contract. Each contract price is weighted by the number of months it is scheduled to be effective. Where the term of the contract is "Life", a 20-year period is used in computing the average price.

Columns (n) and (o) show initial and average base prices plus tax reimbursement payable based on the severance tax charged by the State of Louisiana. The tax reimbursement shown is that to

which the seller has been entitled since December 1, 1958 under the terms of his contract as filed with the Federal Power Commission.

FOOTNOTES

Footnotes appear at page 14, and are designated by an asterisk shown at the left of the given line.

Throughout the listing "NR" means not reported or not identified.

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FOOTNOTES FOR SOUTH LOUISIANA

Tidewater Oil Co. Rate Schedule No. 91: This contract covers acreage in Acadia and Lafayette parishes.

Midwest Oil Corp. (Op.), et al. Rate Schedule No. 20. This contract ratifies a 20-year contract dated 12/30/52 between Sun Oil Co. and the buyer, filed as Sun Oil Co. Rate Schedule No. 38.

Reese E. Carter (Op.), et al. Rate Schedule No. 1: This contract covers deliveries from Maxie and Ellis fields.

H. L. Hunt Rate Schedule No. 18: This contract ratifies a 20-year contract dated 4/9/57 between Bel Oil Corp. and the buyer, filed as Bel Oil Corp. Rate Schedule No. 5, Sales under this rate schedule are also made by Lyda Bunker Hunt Estate (Rate Schedule No. 7) and Secure Trusts (Rate Schedule No. 5). Volume shown is the total volume reported for this contract.

This contract covers deliveries from N. Elton and Oberlin fields.

H. L. Hunt, et al. Rate Schedule No. 25: Date shown is the date of an amendment to a contract dated 6/18/58, which ratifies Shell Oil Co. Rate Schedule No. 25, a 20-year contract dated 8/31/54. The term was extended to 6/1/79 by the amendment, and the prices shown are from the contract as amended. The inerease in price from 16.00¢/Mcf plus tax reimbursement to 21.50¢/Mcf plus 2.05¢/Mcf tax reimursement was suspended until 4/8/60 by FPC order issued 11/6/59 in Docket No. G-20011.

F. E. Jameson, et al. Rate Schedule No. 2: This contract was filed to supersede F. E. Jameson, et al. Rate Schedule No. 1. The new contract was written because of the operation of the

favored-nation clause in the original contract. The increase in price from 16.00¢/Mcf plus tax reimbursement to 21.50¢/Mcf plus 2.05¢/Mcf tax reimbursement was suspended until 11/11/59 by FPC order issued 6/4/59 in Docket No. G-18672.

Mound Company, et al. Rate Schedule No. 15: This contract ratifies a 20-year contract dated 12/29/55 between Sun Oil Co. and the buyer, filed as Sun Oil Co. Rate Schedule No. 71.

Shell Oil Co. Rate Schedule No. 198: This contract was filed to supersede Shell Oil Co. Rate Schedule No. 25. The increase in price from 16.00¢/Mcf plus tax reimbursement to 21.50¢/Mcf plus 2.05¢/Mcf tax reimbursement was suspended until 10/16/59 by FPC Order issued 5/14/59 in Docket No. G-18469.

C. H. Lyons, Jr., et al Rate Schedule No. 4: This contract ratifies a 20-year contract dated 7/11/56 between Texas Gulf Producing Co., et al. and buyer, filed as Texas Gulf Producing Co. Rate Schedule No. 23.

Union Oil Co. of Calfornia Rate Schedule No. 30: This contract was filed to supersede Union Oil Co. of California Rate Schedule No. 8, a short-term contract dated 1/25/46 which expired by its own terms. The increase in price from 9.00¢/Mcf plus tax reimbursement to 18.50¢/Mcf plus 1.75¢/Mcf tax reimbursement was suspended until 12/26/59 by FPC order issued 7/22/59 in Docket No. G-19006.

General Crude Oil Co. Rate Schedule No. 7: Sales under this contract also made by Hurt Oil and Gas Corp., et al. (Rate Schedule No. 1) Volume shown is the total volume reported for the contract.

This contract covers acreage in Calcasieu and Beauregard parishes.

Gulf Oil Corp. (Op.), et al. Rate Schedule No. 161: This contract was filed to supersede Gulf Oil Corp. Rate Schedule No. 85. The increase in price from 12.3142¢/Mcf plus tax reimbursement to 20.50¢/Mcf plus 2.3¢/Mcf tax reimbursement was suspended until 11/7/59 by FPC order issued 6/4/59 in Docket No. G-18669.

This contract covers acreage in Calcasieu and Jefferson Davis Parishes.

Shell Oil Co. (Op.) Rate Schedule No. 203: This contract was filed to supersede Shell Oil Co. Rate Schedule No. 51. The increase in price from 8.997¢/Mcf plus tax reimbursement to 18.50¢/Mcf plus 2.05¢/Mcf tax reimbursement was suspended

until 11/13/59 by FPC order issued 6/11/59 in Docket No. G-18698.

This covers acreage in Calcasieu and Jefferson Davis parishes.

Phillips Petroleum Co., et al. Rate Schedule No. 355: Sales under this contract also made by Kerr-McGee Oil Industries, Inc. (Rate Schedule No. 64) and J. Ray McDermott and Co., Inc. (Rate Schedule No. 12). Volume shown is the total volume reported for this contract.

Caroline Hunt Sands, et al. Rate Schedule No. 5: This contract covers acreage in Cameron and Jefferson Davis parishes.

Amerada Petroleum Corp. Rate Schedule No. 82: This contract covers acreage in Iberia and St. Martin parishes.

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Phillips Petroleum Co. Rate Schedule No. 372: This contract covers acreage in Iberia and St. Martin parishes.

Sid W. Richardson, et al. d/b/a Richardson & Bass (Op.), et al. Rate Schedule No. 2: This contract covers deliveries from Jefferson Island, Abbeville, Maxie, South Rayne and Woodlawn fields in Iberia, Acadia, Jefferson Davis, Lafayette and Vermilion parishes.

The California Co., Rate Schedule No. 13: This contract supersedes The California Co. Rate Schedule No. 9 only as to certain acreage not previously producing.

Continental Oil Co. Rate Schedule No. 172: This contract ratifies a 20-year contract dated 8/7/57 between The California Co. and the buyer, filed as The California Co. Rate Schedule No. 7. This contract covers acreage in Iberia and St. Martin parishes.

Shell Oil Co. (Op.), et al. Rate Schedule No. 206: This contract was filed to supersede Shell Oil Co. Rate Schedule No. 58. The increase in price from 8.997¢/Mcf plus tax reimbursement to 21.50¢/Mcf plus 2.05¢/Mcf tax reimbursement was suspended until 11/13/59 by FPC order issued 6/11/59 in Docket No. G-18697.

This contract covers acreage in Iberia and St. Martin parishes.

Bel Oil Corp. Rate Schedule No. 7: This contract covers acreage in Jefferson Davis and Cameron parishes.

Homer T. Moore Rate Schedule No. 1: Tax reimbursement is based on pressure and volume. If production of gas from a well is 250 Mcf/day or more, tax reimbursement will be 1.75¢/Mcf; if production is less than 250 Mcf/day, tax reimbursement will be 0.875¢/Mcf.

Gulf Oil Corp. Rate Schedule No. 163: This contract ratifies a life contract dated 8/31/56 bewteen J. P. Owen (Op.), et al. and the buyer, filed as J. P. Owen (Op.), et al. Rate Schedule No. 2.

Tidewater Oil Co. Rate Schedule No. 85: This contract ratifies a life contract dated 8/31/56 between J. P. Owen (Op.), et al. and the buyer filed as J. P. Owen (Op.), et al. Rate Schedule No. 2.

Crown Central Petroleum Corp. Rate Schelule No. 7: This contract covers acreage in Lafayette and Vermilion parishes.

Monsanto Chemical Co. (Op.), et al. Rate Schedule No. 28: This contract covers acreage in Lafayette and St. Martin parishes.

Tidewater Oil Co. Rate Schedule No. 75: This contract covers acreage in Lafayette and Vermilion parishes.

H. L. Hunt Rate Schedule No. 30: All prices subject to 1.00¢/Mcf payment for gathering, payable at all times.

Sinclair Oil and Gas Co. (Op.), et al. Rate Schedule No. 167: This contract covers acreage in Lafourche and Terrebonne parishes.

Sohio Petroleum Co. Rate Schedule No. 50: This contract ratifies a 20-year contract dated 7/17/58 between Sinclair Oil & Gas Co. and the buyer, filed as Sinclair Oil & Gas Co. Rate Schedule No. 167.

Cities Service Production Co. (Op.), et al. Rate Schedule No. 7: Sales under this contract were made by Phillips Petroleum Co. (Rate Schedule No. 334). Phillips Petroleum Co. Rate Schedule No. 334 was withdrawn on 5/20/60.
This contract covers acreage in Lafourche and St. James Parishes.

Hunt Oil Co. Rate Schedule No. 50: This contract ratifies at 21-year contract dated 7/29/57 between Pan American Petroleum Corp. and the buyer, filed as Pan American Petroleum Corp. Rate Schedule No. 204.

Sword Co., et al. Rate Schedule No. 1: This contract ratifies a 21-year contract dated 8/15/57 between Pan American Petroleum Corp. and the buyer, filed as Pan American Petroleum Corp. Rate Schedule No. 206.

Pan American Petroleum Corp. Rate Schedule No. 227: This contract covers acreage in Lafourche and Terrebonne parishes.

Republic Natural Gas Co., et al. Rate Schedule No. 31: This contract covers acreage in St. Charles and St. John the Baptist parishes.

Humble Oil and Refining Co. Rate Schedule No. 136: This contract covers deliveries from American Island and North American Island fields.

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Shell Oil Co. (Op.), et al. Rate Schedule No. 207: This contract was filed to supersede Shell Oil Company Rate Schedule No. 59. The increase in price from 8.997¢/Mcf plus tax reimbursement to 21.50¢/Mcf plus 2.05¢/Mcf tax reimbursement was suspended until 11/13/59 by FPC order issued 6/11/59 in Docket No. G-18697.

Shell Oil Co. Rate Schedule No. 220: This contract covers acreage in St. Mary and Terrebonne parishes.

Southwest Gas Producing Co., Inc. (Op.), et al. Rate Schedule No. 12: Sales under this contract are also made by Argo Oil Corp. (Rate Schedule No. 37). Volume shown is the total volume reported for this contract.

Humble Oil & Refining Co. Rate Schedule No. 148: Sales under this contract are also made by Lillie C. Cullen, et al. (Rate Schedule No. 2). Volume shown is the total volume reported for this contract.

Hassie Hunt Trust Rate Schedule No. 22: Sales under this contract are also made by The British-American Oil Producing Co. (Rate Schedule No. 42). Volume shown is the total volume reported for this contract.

This contract covers deliveries from Northwest Mosquito Bay and Wildcat Bayou fields.

Shell Oil Co. Rate Schedule No. 200: This contract covers deliveries from Humphreys and S. Humphreys fields.

Petroleum, Inc. (Op.), et al. Rate Schedule No. 14: Sales under this contract also made by Hurt Oil & Gas Corp. Rate Schedule No. 3. Volume shown is the total volume reported for this contract.

Robert B. Prentice (Op.), et al. Rate Schedule No. 3: This contract was filed to supersede Robert B. Prentice (Op.), et al. Rate Schedule No. 1, a 10-year contract dated 3/13/50. The increase in price from 10.00¢/Mcf plus tax reimbursement to 21.50¢/Mcf plus 1.75¢/Mcf tax reimbursement was suspended until 3/1/60 by FPC order issued 9/18/59 in Docket No. G-19475.

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Shell Oil Co. (Op.), et al. Rate Schedule No. 202: This contract was filed to supersede Shell Oil Co. Rate Schedule No. 50, a short-term contract dated 10/5/44. The increase in price from 8.997¢/Mcf plus tax reimbursement to 21.25¢/Mcf plus 2.05¢/Mcf tax reimbursement was suspended until 11/13/59 by FPC order issued 6/11/59 in Docket No. G-18697.

Shell Oil Co. Rate Schedule No. 204: This contract was filed to supersede Shell Oil Co. Rate Schedule No. 54. The increase in price from 8.997/Mcf plus tax reimbursement to 21.50¢/Mcf plus 2.05¢/Mcf tax reimbursement was suspended until 11/13/59 by FPC order issued 6/11/59 in Docket No. G-18699.

Shell Oil Co. Rate Schedule No. 205: This contract was filed to supersede Shell Oil Co. Rate Schedule No. 56. The increase in price from 8.997¢/Mcf plus tax reimbursement to 21.50/Mcf plus 2.05¢/Mcf tax reimbursement was suspended until 11/13/59 by FPC order issued 6/11/59 in Docket No. G-18699.

The Superior Oil Co. Rate Schedule No. 89: This contract covers deliveries from Bayou Penchant, Palmetto Bayou and Four Isle Dome fields.

Texas Gulf Producing Co. Rate Schedule No. 31: This contract was filed to supersede Texas Gulf Producing Company Rate Schedule No. 14. The increase in price from 8.997¢/Mcf plus tax reimbursement to 20.00¢/Mcf plus 2.05¢/Mcf tax reimbursement was suspended until 7/26/59 by FPC order issued 2/25/59 in Docket No. G-17884.

Texas Gulf Producing Co. Rate Schedule No. 32: This contract was filed to supersede Texas Gulf Producing Company Rate Schedule No. 5. The increase in price from 8.997¢/Mcf plus tax reimbursement to 20.00¢/Mcf plus 2.05¢/Mcf tax reimbursement was suspended until 7/28/59 by FPC order issued 2/25/59 in Docket No. G-17884.

Union Producing Company Rate Schedule No. 228: This contract was filed to supersede Union Producing Company Rate Schedule No. 68. The increase in price from 8.997¢/Mcf plus tax reimbursement to 20.00¢/Mcf plus 2.05¢/Mcf tax reimbursement was suspended until 6/24/59 by FPC order issued 1/22/59 in Docket No. G-17589.
Buyer and seller are associated companies.

Union Producing Company Rate Schedule No. 229: This contract was filed to supersede Union Producing Company Rate Schedule No. 69. The increase in price from 8.997¢/Mcf plus tax reimbursement to 20.00¢/Mcf plus 2.05¢/Mcf tax reimbursement was suspended until 6/24/59 by FPC order issued 1/22/59 in Docket No. G-17589.
Buyer and seller are associated companies.

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Union Producing Company Rate Schedule No. 239: Date Shown is the date of an amendment to a short-term contract dated 4/8/55. The term was extended by the amendment to 10/1/78. The initial and average base prices are from the contract as amended.
Buyer and seller are associated companies.

Pan American Petroleum Corp. Rate Schedule No. 258: This contract covers deliveries from Blocks 14, 15 and 26 Vermilion Area (offshore).

M¹S Production Co., Inc., et al. Rate Schedule No. 1: This contract ratifies a 21-year contract dated 1/9/58 between Pan American Petroleum Corp. and the buyer, filed as Pan American Petroleum Corp. Rate Schedule No. 219.

FA-4609

SUMMARY OF QUALITY SPECIFICATIONS IN LONG-TERM CONTRACTS IN SOUTH LOUISIANA, CONTRACTS FILED WITH THE FEDERAL POWER COMMISSION DATED BETWEEN JANUARY 1, 1958 AND JUNE 30, 1959

A. Btu Content of Gas

Number of Contracts In Analysis (a)	No Minimum Specified (b)	Minimum Btu Content per Cubic Foot[a/] Below 950 (c)	950 to 974 (d)	975 to 1025 (e)	Above 1025 (f)	Credit for Excess Btu Content: Proportional (g)	Credit for Excess Btu Content: Other Basis (h)	Penalty for Low Btu Content: Proportional (i)	Penalty for Low Btu Content: Other Basis (j)
210	--	7	5	198	--	--	--	171	--

B. Sulfur Content

Number of Contracts In Analysis (a)	No Limit Specified (b)	Hydrogen Sulfide Limit (gr/100 cf): 0.5 or Below (c)	0.51 to 1.0 (d)	1.1 to 5.0 (e)	Over 5.0 (f)	Sulfur Limit (gr/100 cf): 10.0 or Below (g)	10.1 to 20.0 (h)	Over 20.0 (i)	Penalty for Sour Gas (Cents/Mcf): 0.5 or Below (j)	0.51 to 1.0 (k)	Over 1.0 (l)	Cost to Buyer (m)
210	--	53	155	2	--	41	169	--	--	--	--	26

C. Dehydration

Number of Contracts In Analysis (a)	No Minimum Specified (b)	Seller Dehydrates to (#/MMcf): 6.0 or Below (c)	6.1 to 7.0 (d)	Over 7.0 (e)	Buyer's Specifications (f)	Payment by Purchaser (Cents/Mcf): Below .20¢ (g)	.20¢ to .25¢ (h)	Over .25¢ (i)	Payment by Seller (Cents/Mcf): Below .20¢ (j)	.20¢ to .25¢ (k)	Over .25¢ (l)	Cost to Buyer (m)
210	5	77	128	--	--	--	--	--	--	--	--	18

D. Delivery Pressure

Number of Contracts In Analysis (a)	No Maximum Specified[b/] (b)	Maximum Delivery Pressure (psig): 75 or Below (c)	76 to 200 (d)	201 to 499 (e)	500 to 599 (f)	600 to 800 (g)	801 to 1100 (h)	Above 1100 (i)	Charge of Penalty for First Stage of Compression (Cents/Mcf): .50¢ or Below (j)	.51¢ to .90¢ (k)	Above .90¢ (l)	Compression Cost (m)
210	--	--	--	--	--	2	183	25	--	1	2	15

Source: Data include sales to pipeline companies under contracts dated between January 1, 1958 and June 30, 1959 with terms of 15 years or longer which were filed with the FPC as rate schedules and filmed by The C. D. Lockwood Co. through June 30, 1961.

a/ The minimum Btu content acceptable without penalty, or, where there is no price penalty, the minimum below which the gas may be rejected by the purchaser. Btu content is specified per cubic foot at approximately 14.73 psia.

b/ Includes contracts which specify only that gas must be delivered at a pressure sufficient to enter buyer's line.

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Sheet 1 of 2
Schedule 3

DISTRIBUTION OF INITIAL BASE PRICES PLUS TAX REIMBURSEMENT IN SOUTH LOUISIANA UNDER LONG-TERM CONTRACTS FILED WITH THE FEDERAL POWER COMMISSION

Contracts Dated Between January 1, 1958 and June 30, 1959

Initial Base Price Plus Tax Reimbursement (15.025 psia) (15.015 psia)	Number of Contracts		Annual Volume 15.025 psia) 15.025 psia)
	Total Total	Reported Reported	
(a)	(b)	(c)	(d)
24.05	8	7	21,171.3
23.80	3	3	42,294.3
23.68	4	4	1,623.2
23.60	9	9	24,462.0
23.55	57	55	127,712.9
23.30	7	7	15,389.6
23.25	1	1	996.1
23.15	1	1	15,783.2
23.05	6	6	3,858.2
23.00	1	—	—
22.95	2	2	330.4
22.90	3	3	3,601.2
22.86	3	3	11,460.3
22.55	1	1	6,558.8
22.30	1	1	6,100.8
22.25	3	3	726.0
22.18	2	2	2,412.0
22.10	2	2	1,766.8
22.05	10	10	8,226.1
22.00	5	5	28,147.7

21.75	1	1	193.5
21.40	3	3	12,641.9
21.30	1	1	1,800.0
20.75	3	3	5,628.5
20.55	1	1	7,568.0
20.50	1	1	309.1
20.38	4	4	1,996.7
20.25	22	22	15,188.4
20.00	3	3	1,125.4
19.75	7	7	10,142.2
19.50	2	2	190.4
19.10	7	7	11,938.0

DISTRIBUTION OF INITIAL BASE PRICES
(continued)

Initial Base Price Plus Tax Reimbursement (Cents per Mcf) (15.025 psia)	Number of Contracts		Annual Volume (MMcf at 15.025 psia)
	Total	With Volume Reported	
(a)	(b)	(c)	(d)
19.05	3	3	959.3
18.75	4	4	1,058.2
18.70	2	2	2,896.6
18.50	8	8	3,762.1
18.10	2	2	1,246.9
17.90	5	5	1,349.0
17.75	1	1	438.1
17.50	4	4	663.7
16.90	1	1	221.4
15.50	1	1	282.0
13.75	1	1	12.0
TOTAL	216	212	404,232.3

Source: Schedule No. 1.

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Schedule 4
Sheet 1 of 3

DISTRIBUTION OF AVERAGE BASE PRICES PLUS TAX REIMBURSEMENT IN SOUTH LOUISIANA UNDER LONG-TERM CONTRACTS FILED WITH THE FEDERAL POWER COMMISSION

Contracts Dated Between January 1, 1958 and June 30, 1959

Average Base Price Plus Tax Reimbursement (Cents per Mcf) (15.025 psia)	Number of Contracts		Annual Volume (MMcf at 15.025 psia)
	Total	With Volume Reported	
(a)	(b)	(c)	(d)
28.45	2	1	744.0
28.40	1	1	14,630.4
28.35	6	6	20,427.3
28.25	1	1	281.9
28.05	2	2	2,455.0
28.00	2	2	20,983.7
27.95	8	8	7,961.1
27.88	1	1	45.3
27.85	8	8	7,280.7
27.80	1	1	82.4
27.75	1	1	619.9
27.70	1	1	7,316.1
27.68	3	3	1,577.9
27.55	5	5	10,910.8
27.50	2	2	3,330.0
27.45	1	1	996.1
27.40	7	7	14,118.4
27.35	1	1	1,080.0
27.30	4	4	15,547.6
27.05	1	1	15,783.2

27.00	1	—	—
26.80	2	2	3,377.6
26.60	3	3	6,868.9
26.55	1	1	6,558.8
26.48	2	2	2,412.0
26.40	2	2	18,000.0
26.30	2	2	10,057.7
26.10	2	2	7,920.6
25.90	1	1	9,583.4
25.80	1	1	1,238.7
25.55	21	19	38,760.0
25.45	1	1	193.5
25.25	1	1	640.8

Schedule 4
Sheet 2 of 3

DISTRIBUTION OF AVERAGE BASE PRICES
(continued)

Average Base Price Plus Tax Reimbursement (Cents per Mcf) (15.025 psia)	Number of Contracts		Annual Volume (MMcf at 15.025 psia)
	Total	With Volume Reported	
(a)	(b)	(c)	(d)
25.20	1	1	1,800.0
25.15	3	3	2,538.2
24.05	12	12	59,042.7
24.85	1	1	6,137.3
24.75	1	1	618.3
24.50	1	1	309.1
24.35	2	2	330.4
24.30	1	1	661.0
24.20	2	2	8,017.2
24.10	2	2	6,110.1

23.95	1	1	540.0
23.80	1	1	100.4
23.75	2	2	186.0
23.70	1	1	90.0
23.65	3	3	2,327.9
23.60	1	1	90.0
23.55	7	7	5,898.2
23.50	3	3	1,598.0
23.45	1	1	7,568.0
22.58	4	4	1,996.7
22.55	5	5	8,092.6
22.45	14	14	9,371.3
22.35	2	2	1,615.2
22.30	2	2	8,141.8
22.25	2	2	221.3
22.10	2	2	823.2
21.80	2	2	1,521.6
21.75	1	1	898.2
21.70	4	4	4,213.4
21.60	1	1	360.0
21.55	2	2	337.7
21.25	1	1	6.7
21.00	1	1	360.0
20.80	5	5	2,011.5
20.70	1	1	1,631.3

(3793)

3793

Schedule 4
Sheet 3 of 3

DISTRIBUTION OF AVERAGE BASE PRICES
(continued)

Average Base Price Plus Tax Reimbursement (Cents per Mcf) (15.015 psia)	Number of Contracts		Annual Volume (MMcf at 15.025 psia)
	Total	With Volume Reported	
(a)	(b)	(c)	(d)
20.55	5	5	1,638.8
20.35	1	1	17.8
20.25	1	1	372.0
20.10	3	3	1,496.7
20.00	1	1	641.5
19.90	1	1	192.0
19.80	1	1	360.0
19.70	1	1	420.0
19.65	1	1	438.1
19.50	2	2	315.6
19.40	2	2	284.4
17.50	1	1	190.9
17.00	1	1	282.0
16.00	1	1	221.4
15.65	1	1	12.0
TOTAL	216	212	404,232.3

Source: Schedule No. 1.

3794

Schedule 5

SUMMARY OF PRICES IN SOUTH LOUISIANA UNDER LONG-TERM CONTRACTS FILED WITH THE FEDERAL POWER COMMISSION

Contracts Dated Between January 1, 1958 and June 30, 1959

Range Based on Volume	Initial Base Price Plus Tax Reimbursement	Average Base Price Plus Tax Reimbursement
(a)	(b)	(c)
1. Highest Price	24.05	28.45
2. High 10%	23.80	28.00
3. Median	23.55	25.90
4. Low 10%	20.25	22.55
5. Lowest Price	13.75	15.65

Source: Contracts dated January 1, 1958 through June 30, 1959 which cover sales to pipeline companies, have a term of 15 years or longer (or life), were filed with the Federal Power Commission as rate schedules, and were microfilmd by The C. D. Lockwood Company through June 30, 1961; additional contracts filed as exhibits in certificate applications filed with the Federal Power Commission through September 30, 1961.

"Low 10%" indicates that contracts covering 10 per cent of the volume delivered in 1960 are at or below the price shown. "Median" is the price above and below which contracts covering half of the volume fall, and "High 10%" indicates that contracts covering 10% of the volume are at or above the price shown.

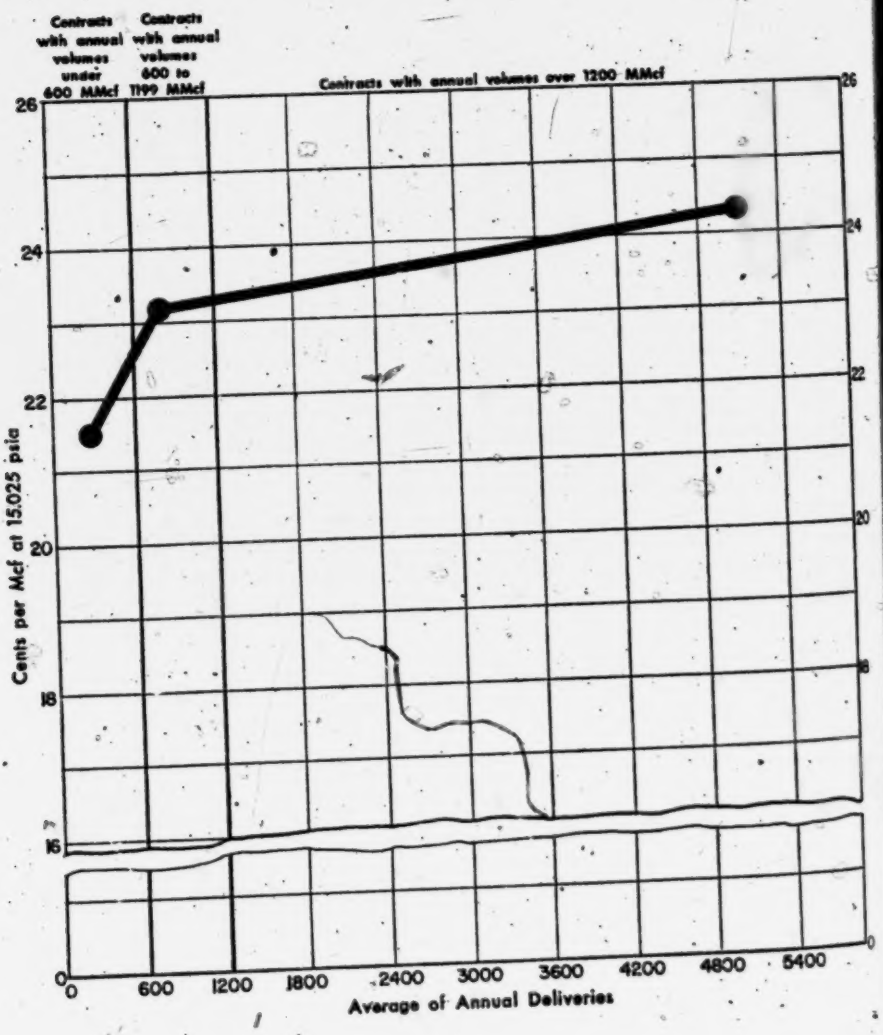
CHART 1

RELATIONSHIP BETWEEN PRICE AND VOLUME

MEDIAN AVERAGE BASE PRICES AND AVERAGE VOLUMES FOR THREE VOLUME CLASSES

SOUTH LOUISIANA

CONTRACTS DATED BETWEEN JANUARY 1, 1958 AND JUNE 30, 1959



Schedule 6

RELATIONSHIP BETWEEN PRICE AND VOLUME

Median Average Base Prices for Three Volume Classes

SOUTH LOUISIANA

Contracts Dated Between January 1, 1958 and June 30, 1959

	Volume Class		
	Under 600 MMcf	600-1199 MMcf	1200 MMcf or More
	(a)	(b)	(c)
Number of Contracts	102	41	67
Annual Deliveries (MMcf at 15.025 psia)			
Total	27,611.0	32,944.5	341,696.8
Average per Contract	270.7	803.5	5,100.0
Median Average Base Price (Cents per Mcf at 15.025 psia)	21.5c	23.2c	24.3c

Source: Contracts dated January 1, 1958 through June 30, 1959, which cover sales to pipeline companies, have a term of 15 years or longer (or life), were filed with the Federal Power Commission as rate schedules and were microfilmed by The C. D. Lockwood Company through June 30, 1961.

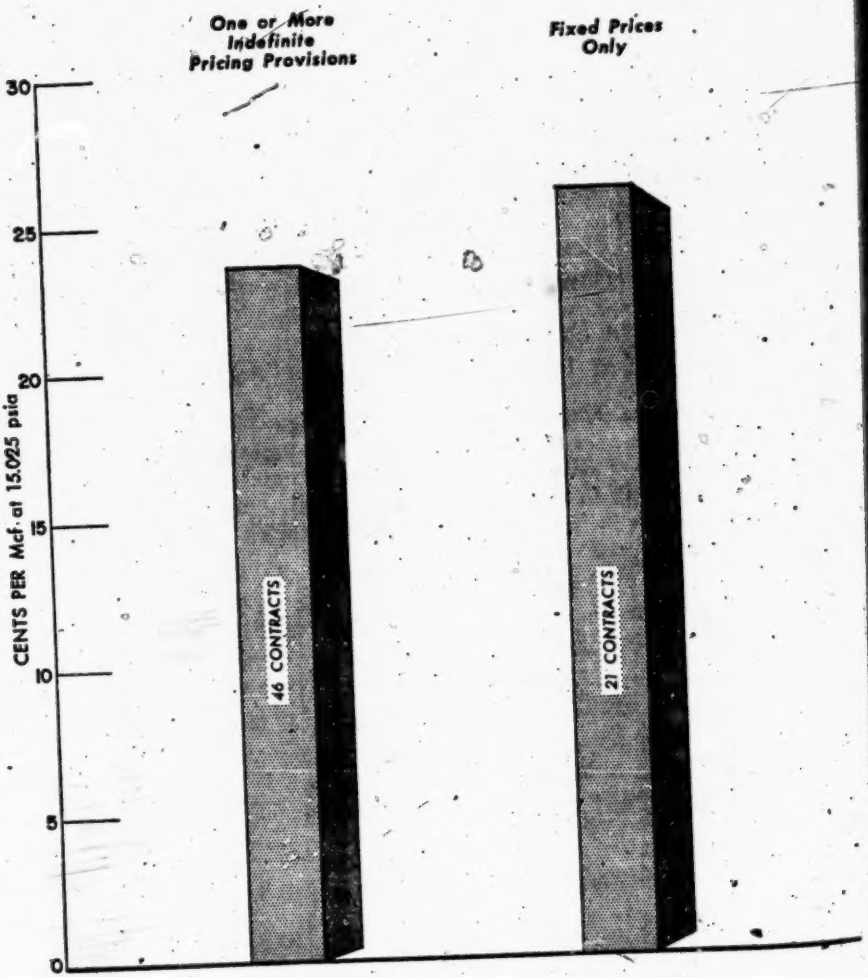
The "Median" is the price above and below which is to be found one-half the contracts within each volume class.

CHART 2

RELATIONSHIP BETWEEN PRESENCE OR ABSENCE OF INDEFINITE PRICING PROVISIONS AND AVERAGE BASE PRICES

LARGE VOLUME CONTRACTS IN SOUTH LOUISIANA
Dated Between January 1, 1958 and June 30, 1959

WEIGHTED AVERAGE OF AVERAGE BASE PRICE



3798

Schedule 7

RELATIONSHIP BETWEEN PRESENCE OR ABSENCE OF INDEFINITE PRICING PROVISIONS AND AVERAGE BASE PRICES

Large Volume Contracts in South Louisiana Dated January 1, 1958 through June 30, 1959

Weighted Average of Average Base Prices

(1200 MMcf or More per year)

	One or More Indefinite Pricing Provisions	Fixed Prices (Only)
	(a)	(b)
Number of Contracts	46	21
Annual Deliveries (MMcf at 15.025 psia)		
Total	243,406.1	98,290.7
Average per contract	5,291.4	4,680.5
Weighted Average of Average Base Prices (Cents per Mcf at 15.025 psia)	23.6	25.9

Source: Contracts dated January 1, 1958 through June 30, 1959, which cover sales to pipeline companies, have a term of 15 years or longer (or life), were filed with the Federal Power Commission as rate schedules, and were microfilmed by The C. D. Lockwood Company through June 30, 1961.

The contracts included are those with average annual volumes of 1200 MMcf or more.

Schedule 8

SUMMARY OF PRICES IN SOUTH LOUISIANA UNDER LONG-TERM CONTRACTS FILED WITH THE FEDERAL POWER COMMISSION

Contracts Dated July 1, 1959 or Later

Range Based on Volume	Initial Base Price Plus Tax Reimbursement	Average Base Price Plus Tax Reimbursement
(a)	(b)	(c)
1. Highest Price	24.80	28.80
2. High 10%	23.60	27.90
3. Median	22.83	25.90
4. Low 10%	20.67	23.00
5. Lowest Price	12.50	14.50

Source: Contracts dated July 1, 1959 or later which cover sales to pipeline companies, have a term of 15 years or longer (or life), were filed with the Federal Power Commission as rate schedules, and were microfilmed by The C. D. Lockwood Company through June 30, 1961; additional contracts filed as exhibits in certificate applications filed with the Federal Power Commission through September 30, 1961.

"Low 10%" indicates that contracts covering 10 per cent of the estimated volume to be delivered are at or below the price shown. "Median" is the price above and below which contracts covering half of the volume fall, and "High 10%" indicates that contracts covering 10% of the volume are at or above the price shown.

3800

Hearing Ex. No. X-6, Rev. Sched. #9

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket Nos. G-12446, et al.

In the Matters of

TEXAS EASTERN TRANSMISSION CORPORATION, et al.

EXHIBIT ACCOMPANYING TESTIMONY OF JOHN P. FURMAN SCHEDULE 9 REVISED

Foster Associates, Inc.
Washington, D. C.

November 1961

FA-633

SALES IN SOUTH LOUISIANA PERMANENTLY CERTIFICATED BY THE FEDERAL POWER COMMISSION
WITH AVERAGE BASE PRICES OF 20.00¢/Mcf OR ABOVE
BY DATE OF CERTIFICATION

Purchaser / Filing Company (a)	Docket Number (G- or CI-) (b)	Date of FPC Order (c)	Rate Sch. No. (d)	Date of Contract (e)	Field (f)	Parish (g)	Term (Yrs) (h)	Annual Volume[a] (Mcf at 15.025) (i)	Initial Base Price (j)	Initial Base Price Plus Tax Reimbursement[b] (k)	Average Base Price (l)	Average Base Price Plus Tax Reimbursement[b] (m)
									(Cents per Mcf at 15.025 psia)			
United Fuel Gas Company												
Tidewater Oil Co.	2801	10/28/54	26	9/11/52	Erath	Vermilion	20	8,622.9	20.00	21.50	21.9	23.40
Humble Oil & Refining Co.	3109	11/2/54	23	9/11/52	Erath	Vermilion	20	2,771.5	20.00	21.50	21.9	23.40
Texaco Inc.	3646	11/2/54	6	9/10/52	Erath	Vermilion	20	15,859.2	20.00	21.50	21.9	23.40
United Gas Pipe Line Company												
Cocke, W. H.	3059	12/13/54	1	7/26/54	Duck Lake	St. Mary, St. Martin	19	200.6	12.50	14.25	21.4	23.15
Goodrich, R. H.	3026	12/13/54	1	7/30/54	Duck Lake	St. Mary, St. Martin	19	200.6	12.50	14.25	21.4	23.15
Humble Oil & Refining Co.	3112	12/15/54	35	2/9/54	Duck Lake	St. Mary, Iberia	19	10,990.8	12.35	14.10	21.0	22.75
American Louisiana Pipe Line Company												
British American Oil Producing Co., The	6813	5/9/55	17	11/6/53	Cameron	Cameron	23	3,730.7	18.25	19.75	22.0	23.50
Kerr-McGee Oil Industries, Inc.	6068	5/9/55	27	11/6/53	Cameron	Cameron	20	3,656.7	18.25	19.75	22.0	23.50
Pan American Petroleum Corp.	6069	5/9/55	152	11/1/53	Savoy	St. Landry	23	1,737.8	18.25	19.75	22.0	23.50
Pan American Petroleum Corp.	6070	5/9/55	153	11/1/53	Iowa	Jefferson Davis, Calcasieu	23	4,579.6	18.25	19.75	22.0	23.50
Pan American Petroleum Corp.	6071	5/9/55	154	6/1/53	Lewisburg	Acadia, St. Landry	23	1,781.3	20.00	21.50	23.8	25.30
Pan American Petroleum Corp.	6072	5/9/55	155	11/1/53	N. Elton	Allen	23	1,925.1	18.25	19.75	22.0	23.50
Pan American Petroleum Corp.	6073	5/9/55	156	11/1/53	S. Elton	Jefferson Davis	23	1,099.7	18.25	19.75	22.0	23.50
Pan American Petroleum Corp.	6074	5/9/55	157	11/1/53	Welsh	Jefferson Davis	23	1,822.7	18.25	19.75	22.0	23.50
Pan American Petroleum Corp.	6075	5/9/55	158	11/1/53	Bayou Mallet	Acadia	23	2,192.9	18.25	19.75	22.0	23.50
Pan American Petroleum Corp.	6076	5/9/55	159	6/1/53	S. Jennings	Jefferson Davis	23	8,418.9	20.00	21.50	23.8	25.30
Pan American Petroleum Corp.	6077	5/9/55	160	11/1/53	Cameron	Cameron	23	8,361.9	18.25	19.75	22.0	23.50
Superior Oil Co., The	6067	5/9/55	7	7/17/53	W. Cameron	Cameron, Vermilion	20	60,604.3	20.00	21.50	23.8	25.30
United Gas Pipe Line Company												
Johnston, C. N., et al.	8732	6/27/55	1	4/8/55	Duck Lake	St. Mary, St. Martin	18	16.3	12.50	14.25	21.6	23.35
Texaco Inc.	4821	12/5/55	102	6/1/54	Duck Lake	St. Mary	19	1,818.2	12.50	14.25	21.2	22.95
Texas Gas Transmission Corporation												
Atlantic Refining Co., The	8809	12/30/55	155	4/22/55	E. Lake Palourde	Assumption	20	473.9	20.00	21.75	23.0	24.75
California Co., The	8810	12/30/55	5	4/1/55	E. Lake Palourde	Assumption	20	2,836.3	20.00	21.75	23.0	24.75
Union Oil Co. of California	8811	12/30/55	13	4/14/55	E. Lake Palourde	Assumption	20	21,735.0	20.00	21.875[c]	23.0	24.875[c]
United Fuel Gas Company												
Phillips Petroleum Co.	10020	8/10/56	273	1/21/53	Erath	Vermilion	20	16,707.9	20.00	21.50	21.9	23.40
Texas Gas Transmission Corporation												
Grande Corp., The	10669	1/18/57	2	6/26/56	Thibodaux	Lafourche	20	5,177.2	20.00	21.75	23.0	24.75

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Purchaser / Filing Company (a)	Docket Number (G- or CI-) (b)	Date of FPC Order (c)	Rate Sch. No. (d)	Date of Contract (e)	Field (f)	Parish (g)	Term (Yrs) (h)	Annual Volume[a] (Mcf at 15.025) (i)	Initial Base Price (j)	Initial Base Price Plus Tax Reimbursement[b] (k)	Average Base Price (l)	Average Base Price Plus Tax Reimbursement[b] (m)
									(Cents per Mcf at 15.025 psia)			
American Louisiana Pipe Line Company												
Phillips Petroleum Co.	10504	3/13/57	278	5/21/56	Lewisburg	Acadia, St. Landry	20	783.4	20.00	21.50	23.8	25.30
Grey Wolf Drilling Co.	10258	4/8/57	1	2/1/56	Savoy	St. Landry	23	466.1	18.25	19.75	22.0	23.50
Southern Natural Gas Company												
Kerr-McGee Oil Industries, Inc.	12235	7/12/57	51	2/26/57	Breton Sound	Plaquemines	20	[d]	20.25	22.00	22.3	24.05
Kerr-McGee Oil Industries, Inc.	12234	7/12/57	52	3/1/57	Main Pass	Plaquemines	20	9,682.5	20.25	22.00	22.3	24.05
Phillips Petroleum Co.	12333	7/12/57	299	2/26/57	Bastian Bay	Plaquemines	20	5,546.8	20.25	22.00	22.3	24.05
Phillips Petroleum Co.	12334	7/12/57	300	2/26/57	Main Pass, Chandelier Sound	Plaquemines, St. Bernard	20	2,668.3	20.25	22.00	22.3	24.05
Phillips Petroleum Co.	12335	7/12/57	301	2/26/57	Breton Sound	Plaquemines	20	4,158.6	20.25	22.00	22.3	24.05
Socony Mobil Oil Co., Inc.	12362	7/12/57	164	2/27/57	Main Pass Area	Plaquemines	20	1,516.5	20.25	22.00	22.3	24.05
American Louisiana Pipe Line Company												
Trice Production Co.	12069	7/19/57	4	5/7/56	Welsh	Jefferson Davis	20	1,557.8	18.25	19.75	22.0	23.50
Texas Gas Transmission Corporation												
Superior Oil Co., The	11559	7/29/57	69	11/16/56	Amelia, E. Lake Palourde	Assumption	20	1,856.2	20.00	21.875[m]	23.0	24.875[m]
United Fuel Gas Company												
Royalite Oil Co., Inc.	12398	8/6/57	1	3/15/57	Deep Lake	Cameron	20	503.1	16.80	18.30	20.0	21.50
Seagram, Joseph E. & Sons, Inc. d/b/a Frankfort Oil Co.	12398	8/6/57	3	3/15/57	Deep Lake	Cameron	20	503.1	16.80	18.30	20.0	21.50
American Louisiana Pipe Line Company												
Herrington, Louise H.	11590	8/8/57	2	10/15/56	S. Elton	Jefferson Davis	23	4.5	18.25	19.75	22.1	23.60
United Gas Pipe Line Company												
Humble Oil & Refining Co.	12422	10/29/57	123	3/5/57	Lapeyrouse	Terrebonne	20	2,159.4	18.50	20.25	20.7	22.45
United Fuel Gas Company												
Mosbacher, Robert	12266	11/6/57	10	10/26/56	Erath	Vermilion	20	170.2	20.20	21.70	22.3	23.80
United Gas Pipe Line Company												
Phillips Petroleum Co.	12818	12/13/57	295	5/20/57	Bayou Piquant	Terrebonne	20	--	20.00	21.75	21.5	23.25
American Louisiana Pipe Line Company												
Austral Oil Co., Inc.	11253	1/17/58	6	7/10/56	N. Holly Beach	Cameron	20	2,801.1	18.00	19.50	21.8	23.30
Seagram, Joseph E. & Sons, Inc. d/b/a Frankfort Oil Co.	11503	1/17/58	2	9/15/56	Second Bayou	Cameron	20	649.9	18.00	19.50	21.8	23.30
Tidewater Oil Co.	11265	1/17/58	61	7/10/56	N. Holly Beach	Cameron	20	1,404.8	18.00	19.50	21.8	23.30
United Fuel Gas Company												
Austral Oil Co., Inc. (Op.), et al.	12825	1/20/58	2	6/5/57	S. Lake Arthur	Cameron, Jefferson Davis, Vermilion	20	833.5	16.80	18.30	20.0	21.50
Mosbacher, Robert (Op.), et al.	12772	1/20/58	14	6/7/57	Valentine	Lafourche	20	759.2	16.80	18.30	20.0	21.50

FA-4633

Purchaser / Filing Company (a)	Docket Number (G- or CI-) (b)	Date of FPC Order (c)	Rate Sch. No. (d)	Date of Contract (e)	Field (f)	Parish (g)	Term (Yrs) (h)	Annual Volume a/ (MMcf at 15.025) (i)	Initial Base Price (j)	Initial Base Price Plus Tax Reimbursement b/ (k)	Average Base Price (k)	Average Base Price Plus Tax Reimbursement b/ (l)
									(Cents per Mcf at 15.025 psia).			
United Gas Pipe Line Company												
Humble Oil & Refining Co.	13009	1/20/58	124	7/18/57	Halter Island	Terrebonne	20	3,737.1	20.00	21.75	21.5	23.25
Austral Oil Co., Inc.	12967	1/24/58	7	7/3/57	Lake Hatch	Terrebonne	20	720.0	20.00	22.05	21.5	23.55
Superior Oil Co., The	12878	1/24/58	74	6/21/57	Lake Hatch	Terrebonne	20	278.4	20.00	22.05	21.5	23.55
Union Oil Co. of California	13003	1/24/58	21	6/25/57	Lake Hatch	Terrebonne	20	1,095.1	20.00	22.05	21.5	23.55
Tidewater Oil Co.	13136	1/27/58	66	8/15/57	S. E. Houma	Terrebonne	20	798.3	18.50	20.25	20.6	22.35
Lyons and Logan (Op.), et al.	13199	2/28/58	8	8/1/57	E. Bell City	Calcasieu	20	160.3	18.50	20.25	20.7	22.45
Trice Production Co.	13131	2/28/58	5	8/1/57	E. Bell City	Calcasieu	20	e/	18.50	20.25	20.7	22.45
Southern Natural Gas Company												
California Co., The	13947	3/17/58	8	11/15/57	W. Black Bay	Plaquemines	20	1,682.9	19.00	20.75	21.0	22.75
Continental Oil Co.	13855	3/17/58	153	9/24/57	Lake Fortuna	St. Bernard	20	46.7	19.00	20.75	21.0	22.75
Gulf Oil Corp.	13447	3/17/58	139	6/28/57	Black Bay	Plaquemines	20	4,496.4	20.25	22.00	22.3	24.05
Helis, William G., Estate of	13553	3/17/58	2	6/28/57	Lake Campo	Plaquemines	20	425.2	20.25	22.00	22.3	24.05
Helis, William G., Estate of	13554	3/17/58	3	6/28/57	Black Bay	Plaquemines	20	4,353.6	20.25	22.00	22.3	24.05
O'Meara, M. P., et al.	13339	3/17/58	2	8/23/57	Lake Fortuna	St. Bernard	20	149.2	19.00	20.75	21.0	22.75
Shell Oil Co.	13945	3/17/58	169	9/3/57	Lake Campo	Plaquemines	20	425.2	20.25	22.00	22.3	24.05
Shell Oil Co.	13944	3/17/58	176	11/19/57	W. Black Bay	Plaquemines	20	726.3	19.00	20.75	21.0	22.75
United Gas Pipe Line Company												
Ohio Oil Co., The (Op.), et al.	12185	3/25/58	36	2/1/57	Theall	Vermilion	20	1,847.0	18.50	20.25	20.7	22.45
Southern Natural Gas Company												
British-American Oil Producing Co., The (Op.), et al.	13636	3/31/58	29	8/6/57	Tantine	Plaquemines	20	1,840.6	20.25	22.00	25.0	26.75
Cullen, Lillie C., et al.	13873	3/31/58	1	10/14/57	Tantine	Plaquemines	20	1,431.3	20.25	22.00	25.0	26.75
United Gas Pipe Line Company												
Texaco Seaboard, Inc.	11970	3/31/58	23	1/16/57	Maurice	Lafayette, Vermilion	20	1,281.2	18.50	20.25	20.7	22.45
Wrightsman, Charles B.	12055	3/31/58	3	1/16/57	Maurice	Lafayette, Vermilion	20	f/	18.50	20.00	20.7	22.20
Amerada Petroleum Corp.	14116	4/7/58	64	12/16/57	S. Lewisburg	Acadia	20	1,188.1	18.50	20.25	20.7	22.45
Southern Natural Gas Company												
Aluminum Co. of America	13290	4/18/58	1	5/16/57	NR	St. Martin	20	5,006.8	21.50	23.25	25.5	27.25
Berkshire Oil Co., et al.	13224	4/18/58	1	8/5/57	Bayou Pigeon	Iberia	20	4,200.1	21.50	23.55	25.5	27.55
California Co., The	13222	4/18/58	7	8/7/57	Bayou Long, Bayou Willars, Marreo, S. Lake Long, Tiger Ridge, W. Delta, Block 30	Iberia, St. Martin, St. Charles, Jefferson; Terrebonne, Lafourche, Plaquemines, Plaquemines (Offshore)	20	4,557.6	21.50	23.675	25.5	27.675
Continental Oil Co.	13301	4/18/58	152	7/23/57	Loisel	Iberia, St. Mary	20	559.6	21.50	23.55	25.5	27.55
Diversa, Inc.	13781	4/18/58	2	9/6/57	Bayou Pigeon	Iberia	20	234.4	21.50	23.25	25.5	27.25
Grande Corp., The	13115	4/18/58	3	7/24/57	E. Happytown, N. Bayou Bouillon	Iberville, St. Martin	20	1,354.7	21.50	23.25	25.5	27.25

Purchaser / Filing Company (a)	Docket Number (G- or CI-) (b)	Date of FPC Order (c)	Rate Sch. No. (d)	Date of Contract (e)	Field (f)	Parish (g)	Term (Yrs) (h)	Annual Volume[a] (MMcf at 15.025) (i)	Initial Base Price (j)	Initial Base Price Plus Tax Reimbursement[b] (k)	Average Base Price (l)	Average Base Price Plus Tax Reimbursement[b] (m)
									(Cents per Mcf at 15.025 psia)			
Southern Natural Gas Company												
Lyons, C. H., Sr., et al.	13487	4/18/58	12	8/15/57	Bayou Long, Mystic Bayou	Iberia, St. Martin	20	3,528.2	21.50	23.25	25.5	27.25
Mecom, John W. (Op.)	13110	4/18/58	6	7/22/57	Lake Washington	Plaquemines	20	10,986.4	21.40	23.15	25.4	27.15
Shell Oil Co.	13256	4/18/58	179	6/1/57	Loisel	Iberia, St. Mary	20	2,224.0	21.50	23.55	25.5	27.55
Sohio Petroleum Co. (Op.), et al.	13135	4/18/58	46	7/8/57	Bayou Bouillon	Iberville, St. Martin	20	1,151.1	21.50	23.00	25.5	27.00
Tidewater Oil Co.	13051	4/18/58	81	7/29/57	Bayou Bouillon	St. Martin	20	635.5	21.50	23.25	25.5	27.25
United Gas Pipe Line Company												
Continental Oil Co.	12214	5/9/58	164	1/1/57	Ridge	Lafayette, Vermilion	20	2,280.9	20.50	22.25	22.0	23.75
Gulf Oil Corp.	12215	5/9/58	136	1/1/57	Ridge	Lafayette, Vermilion	20	1,150.7	20.50	22.25	22.0	23.75
Sunray Mid-Continent Oil Co.	12211	5/9/58	159	1/1/57	Ridge	Lafayette, Vermilion	20	1,670.9	20.50	22.25	22.0	23.75
Superior Oil Co., The	12121	5/9/58	71	2/5/57	Bayou Rambio	Terrebonne	20	1,551.0	20.00	22.05	21.5	23.55
Texas Gulf Producing Co.	12128	5/9/58	25	2/14/57	Bayou Rambio	Terrebonne	20	687.4	20.00	22.05	21.5	23.55
Burton, Wm. T., Industries, Inc.	12714	6/12/58	1	5/25/57	Bayou des Allemands	Lafourche, St. Charles	20	1,131.2	21.25	23.425	23.3	25.475
American Louisiana Pipe Line Company												
Socony Mobil Oil Co., Inc.	11912	6/19/58	18	7/10/56	Cameron	Cameron	20	2,889.1	18.25	20.00	22.0	23.75
United Gas Pipe Line Company												
Union Producing Co.[g]	14124	8/4/58	223	12/11/57	Deer Island	Terrebonne	20	2,946.2	20.00	21.75	21.5	23.25
Texas Gas Transmission Corporation												
British-American Oil Producing Co., The	14515	8/5/58	31	11/22/57	Ramos	Assumption, St. Mary	20	2,148.9	19.00	20.75	20.7	22.45
Sohio Petroleum Co.	14569	8/5/58	43	11/22/57	Ramos	Assumption, St. Mary	20	h/	19.00	20.75	20.7	22.45
Southwest Gas Producing Co., Inc., et al.	14835	8/5/58	10	11/22/57	Ramos	Assumption, St. Mary	20	h/	19.00	20.75	20.7	22.45
United Gas Pipe Line Company												
Tidewater Oil Co.	15103	8/25/58	71	5/5/58	Midland	Acadia	20	804.0	18.50	20.25	20.6	22.35
Cities Service Co.	12852	9/5/58	25	5/13/57	Lapeyrouse	Terrebonne	20	3,483.6	18.50	20.25	20.7	22.45
McLean, Harvey	15990	9/11/58	1	7/10/58	Theall Area	Vermilion	20	33.6	18.50	20.25	20.5	22.25
American Louisiana Pipe Line Company												
Gulf Oil Corp.	10400	10/10/58	91	1/23/56	W. Little Chenier	Cameron	20	1,530.6	18.25	19.75	22.0	23.50
United Fuel Gas Company												
Hawkins, H. L. and H. L., Jr., et al.	13267	10/27/58	7	7/23/57	Valentine	Lafourche	20	136.1	16.80	18.30	20.0	21.50

Purchaser / Filing Company (a)	Docket Number (G- or CI-) (b)	Date of FPC Order (c)	Rate Sch. No. (d)	Date of Contract (e)	Field (f)	Parish (g)	Term (Yrs) (h)	Annual Volume[a] (MMcf at 15.025) (i)	Initial Base Price (j)	Initial Base Price Plus Tax Reimbursement[b] (k)	Average Base Price (l)	Average Base Price Plus Tax Reimbursement[b] (m)
									(Cents per Mcf at 15.025 psia)			
United Gas Pipe Line Company												
Hawkins, H. L. & H. L., Jr., et al.	13279	10/27/58	8	9/3/57	Hayes	Jefferson Davis	20	762.7	18.50	20.25	20.7	22.45
American Louisiana Pipe Line Company												
Kerr-McGee Oil Industries, Inc.	16270	11/7/58	61	7/31/58	Big Lake	Cameron	20	661.0	18.25	19.75	22.8	24.30
Pan American Petroleum Corp.	15130	11/7/58	248	1/10/58	Big Lake	Cameron	21	7,545.5	18.25	19.75	22.7	24.20
United Gas Pipe Line Company												
Union Producing Co.[g]	13788	12/1/58	225	3/18/57	Bayou Rambio	Terrebonne	20	687.4	20.00	22.05	21.5	23.55
United Fuel Gas Company												
Sunray Mid-Continent Oil Co.	13011	12/15/58	178	5/28/57	Valentine	Lafourche	Life	185.4	16.80	18.30	20.3	21.80
Southern Natural Gas Company												
California Co., The	15262	12/29/58	9	11/8/57	Bayou Postillion	Iberia, St. Martin	20	421.7	21.50	23.675	25.5	27.675
United Gas Pipe Line Company												
Pan American Petroleum Corp.	15222	12/31/58	227	4/30/58	Bourg	Lafourche, Terrebonne	20	545.7	18.50	20.00	20.6	22.10
Pan American Petroleum Corp.	15225	1/2/59	228	4/25/58	Napoleonville	Assumption	20	277.5	18.50	20.00	20.6	22.10
Texas Gas Transmission Corporation												
California Co., The	13078	1/26/59	6	5/1/57	Simon Pass	St. Martin, St. Mary, Assumption	20	3,989.2	20.00	21.75	23.0	24.75
United Fuel Gas Company												
Shell Oil Co.	15301	1/26/59	177	5/13/58	E. Cameron	Cameron	20	7,839.6	17.60	19.10	20.8	22.30
United Gas Pipe Line Company												
Sands, Caroline Hunt	15492	2/10/59	2	6/24/58	N. W. Oberlin	Allen	20	516.4	18.50	20.375	20.7	22.575
Monsanto Chemical Co. (Op.), et al.	14874	5/12/59	28	4/1/58	Broussard	Lafayette, St. Martin	20	751.6	18.50	20.25	20.7	22.45
Trunkline Gas Company												
Nicklos Oil & Gas Co. (Op.), et al.	16222	5/22/59	2	8/20/58	S. W. Esther	Vermilion	22	4,642.7	22.00	24.05[i]	26.3	28.35[i]
Pan American Petroleum Corp.	15438	5/22/59	258	6/26/58	Blocks 14, 15, 26	Vermilion (Offshore)	22	6,458.3	22.00	24.05[i]	26.3	28.35[i]
Pan American Petroleum Corp.	16502	5/22/59	259	9/2/58	Kaplan	Vermilion	22	796.1	22.00	24.05[i]	26.3	28.35[i]
Pan American Petroleum Corp.	16501	5/22/59	260	9/2/58	N. Freshwater Bayou	Vermilion	22	857.0	22.00	24.05[i]	26.3	28.35[i]
Union Oil Co. of California	15487	5/22/59	40	6/17/58	N. Freshwater Bayou	Vermilion	23	6,816.2	22.00	24.05[i]	26.3	28.35[i]
Union Oil Co. of California	15485	5/22/59	41	6/17/58	Block 67	Cameron (Offshore)	23	5,021.1	22.00	22.00	26.3	26.30

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									(Cents per Mcf at 15.025 psia)			
Trunkline Gas Company												
Union Oil Co. of California	15486	5/22/59	42	6/17/58	Block 26	Vermilion (Offshore)	23	5,036.6	22.00	22.00	26.3	26.30
United Fuel Gas Company												
Humble Oil & Refining Co.	17105	6/4/59	145	9/24/58	Go Around Bayou	Cameron	20	339.7	17.60	19.10	20.2	21.70
Kerr-McGee Oil Industries, Inc. (Op.), et al.	16992	6/4/59	60	9/24/58	Go Around Bayou	Cameron	20	552.7	17.60	19.10	20.2	21.70
United Gas Pipe Line Company												
Freeport Oil Co.	15915	7/8/59	1	6/13/58	Sunrise	Terrebonne	20	44.4	20.00	22.05	21.5	23.55
Hunt, H. L. (Op.), et al.	15924	7/8/59	19	7/7/58	Pilgrim Church Area	Allen	20	398.4	18.50	20.375	20.7	22.575
Hunt Oil Co. (Op.), et al.	15909	7/8/59	41	7/7/58	Castor Creek Area	Allen	20	361.9	18.50	20.375	20.7	22.575
Hunt Oil Co.	16145	7/8/59	42	7/29/58	S. Mermentau Area	Acadia	20	397.3	18.50	20.25	20.7	22.45
Mecom, John W.	15916	7/8/59	7	7/9/58	Sunrise	Terrebonne	20	44.4	20.00	22.05	21.5	23.55
Bel Oil Corp., et al.	16757	7/14/59	6	8/1/58	Pilgrim Church	Allen	20	720.0	18.50	20.375	20.7	22.575
Lyons & Logan (Op.), et al.	14743	7/27/59	9	3/1/58	Gibson	Terrebonne	20	696.1	18.50	20.25	20.7	22.45
Southern Natural Gas Company												
Bateman, Earl G. d/b/a Bateman Drilling Co. (Op.), et al.	15141	8/7/59	4	4/11/58	Felice Bayou	Plaquemines	20	618.3	19.00	20.75	23.0	24.75
Hunt, H. L.	14905	8/7/59	3	4/2/58	Coffee Bay	Lafourche	20	6,558.8	20.50	22.55	24.5	26.55
Hunt, Lyda Bunker, Estate of Deceased	14904	8/7/59	10	4/2/58	Coffee Bay	Lafourche	20	[1]	20.50	22.55	24.5	26.55
Secure Trusts	14903	8/7/59	6	4/2/58	Coffee Bay	Lafourche	20	[1]	20.50	22.55	24.5	26.55
Hunt Oil Co.	15146	8/7/59	40	4/2/58	Triumph	Plaquemines	20	181.6	21.50	23.55	25.5	27.55
Texaco Inc.	15038	8/7/59	186	4/10/58	Felice Bayou	Plaquemines	20	309.1	19.00	20.50	23.0	24.50
Texas Gas Transmission Corporation												
Humble Oil & Refining Co.	14154	9/25/59	127	12/3/57	E. Lake Palourde	Assumption, St. Martin	20	2,426.3	20.00	21.75	23.3	25.05
United Gas Pipe Line Company												
Cities Service Petroleum Co.	14232	9/28/59	106	1/2/58	S. Lewisburg	Acadia	20	192.0	18.50	20.25	20.7	22.45
Sohio Petroleum Co.	14247	9/28/59	42	1/10/58	S. Lewisburg	Acadia	20	1,500.0	18.50	20.25	20.7	22.45

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									(Cents per Mcf at 15.025 psia)			
American Louisiana Pipe Line Company												
Humble Oil & Refining Co.	15365	10/5/59	140	6/2/58	Cheniere Perdue	Cameron	20	360.1	18.25	19.75	22.0	23.50
United Gas Pipe Line Company												
Hudson Gas & Oil Corp., et al.	15377	10/5/59	3	5/9/58	N. W. Branch	Acadia	20	262.5	18.50	20.25	20.7	22.45
Trunkline Gas Company												
Austral Oil Co., Inc.	15819	10/27/59	13	7/18/58	N. Freshwater Bayou	Vermilion	22	857.0	22.00	24.05[i]	26.3	28.35[i]
United Gas Pipe Line Company												
Trice Production Co.	18885	1/27/60	12	6/16/59	Sunrise	Terrebonne	20	192.0	20.00	22.05	21.5	23.55
United Fuel Gas Company												
MPS Production Co., Inc , et al.	15813	2/5/60	1	7/17/58	Erath	Vermilion	21	471.7	20.60	22.10	22.7	24.20
Pan American Petroleum Corp.	15047	2/5/60	219	1/9/58	Erath	Vermilion	21	1,295.1	20.60	22.10	22.6	24.10
American Louisiana Pipe Line Company												
Tidewater Oil Co.	15707	3/18/60	74	7/10/58	Second Bayou	Cameron	Life	90.0	18.00	19.50	22.1	23.60
Southern Natural Gas Company												
Callery, Francis A. (Op.), et al.	15404	3/18/60	15	2/1/58	Coquille Bay	Plaquemines	20	187.7	19.00	20.75	20.5	22.25
United Fuel Gas Company												
Midwest Oil Corp. (Op.), et al.	17887	3/18/60	15	12/29/58	Branch	Acadia	20	583.7	17.60	19.10	20.3	21.80
Southern Natural Gas Company												
Continental Oil Co.	17520	5/3/60	175	10/27/58	N. Bayou Long	Iberia	20	35.7	21.50	23.675	25.5	27.675
United Gas Pipe Line Company												
Conover, William V.	19195	5/31/60	1	7/13/59	Lapeyrouse	Terrebonne	18	18.0	18.50	20.25	20.9	22.65
Hudson Gas & Oil Corp.	15989	5/31/60	4	11/8/57	Theall	Vermilion	20	218.4	18.50	20.25	20.7	22.45
Trice Production Co.	16543	5/31/60	8	9/22/58	S. Martinville	St. Martin	20	302.2	18.50	20.00	20.8	22.30
American Louisiana Pipe Line Company												
Austral Oil Co., Inc. (Op.), et al.	10386	6/8/60	8	2/9/56	W. Little Cheniere	Cameron	20	740.7	18.25	19.75	22.0	23.50
Petroleum Leaseholds, Inc.	10386	6/8/60	4	1/23/56	Little Chenier	Cameron	20	750.9	18.25	19.75	22.0	23.50
Tidewater Oil Co.	17634	6/8/60	82	12/31/58	N. Holly Beach	Cameron	Life	100.4	18.00	19.50	22.3	23.80
Texas Gas Transmission Corporation												
Frankel, J. R.	18391	6/8/60	3	3/30/59	E. Lake Palourde	Assumption	20	193.5	20.00	21.75	23.7	25.45
Trahan, J. D., Drilling Contractor, Inc	60-394	7/11/60	8	2/29/60	Bayou Chevreuil	Lafourche, St. James, St. John the Baptist	20	1,008.0	20.00	21.75	22.9	24.65

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									(Cents per Mcf at 15.025 psia)			
American Louisiana Pipe Line Company												
Humble Oil & Refining Co.	18605	7/14/60	156	4/24/59	E. Cheniere Perdue	Cameron	20	742.8	18.25	19.75	22.0	23.50
Texas Gas Transmission Corporation												
Argo Oil Corp.	16151	7/14/60	37	6/18/58	Jeanerette	St. Mary	20	k/	19.00	20.75	20.8	22.55
Southwest Gas Producing Co., Inc. (Op.), et al.	16150	7/14/60	12	6/18/58	Jeanerette	St. Mary	20	4,822.5	19.00	20.75	20.8	22.55
United Fuel Gas Company												
Midwest Oil Corp. (Op.), et al.	17471	7/14/60	14	12/29/58	Ellis	Acadia	20	937.9	17.60	19.10	20.3	21.80
American Louisiana Pipe Line Company												
Union Producing Co.	13684	8/10/60	217	9/18/56	Second Bayou	Cameron	Life	908.6	18.00	19.50	21.8	23.30
Southern Natural Gas Company												
Phillips Petroleum Co.	19976	8/10/60	354	9/14/59	Mystic Bayou	St. Martin	20	720.0	21.50	23.25	25.5	27.25
United Gas Pipe Line Company												
Texaco Inc.	18174	8/10/60	194	3/10/59	Welsh	Jefferson Davis	20	518.1	18.50	20.25	20.7	22.45
American Louisiana Pipe Line Company												
Fifteen Oil Co.	18820	9/20/60	2	1/1/59	E. Cheniere Perdue	Cameron	20	495.1	18.25	19.75	22.0	23.50
Southern Natural Gas Company												
Continental Oil Co.	19437	9/20/60	172	4/30/59	Bayou Long	Iberia, St. Martin	20	45.3	21.50	23.675	25.7	27.875
United Fuel Gas Company												
Owen, J. P.	19313	10/31/60	3	8/5/59	Duson	Lafayette	20	360.0	18.00	19.50	20.5	22.00
Texaco Inc.	19121	10/31/60	200	7/9/59	Midland	Acadia	20	540.0	17.60	19.10	20.5	22.00
Trunkline Gas Company												
California Co., The	60-215	11/29/60		1/27/60	S. Mermentau, Riceville	Acadia, Vermilion	20	1,302.0	21.50	23.25	25.9	27.65
Humble Oil & Refining Co., et al.	60-259	11/29/60		1/22/60	Bayou Sale, Bayou Carlin	St. Mary	20	21,600.0	21.50	23.25	25.9	27.65
Richardson & Bass (Op.), et al.	60-209	11/29/60		12/24/59	S. Mermentau, Riceville	Acadia, Vermilion	20	NR	21.50	23.25	25.9	27.65
United Fuel Gas Company												
Humble Oil & Refining Co.	19416	12/21/60	166	7/20/59	Calcasieu Pass	Cameron	20	558.0	18.00	19.50	20.4	21.90
Southern Natural Gas Company												
Atlantic Refining Co., The	60-264	3/10/61	211	11/30/59	Saturday Island	Plaquemines, Jefferson	20	597.6	17.00	19.175	21.0	23.175

Purchaser Filing Company (a)	Docket Number (G- or CI-) (b)	Date of FPC Order (c)	Rate Sch. No. (d)	Date of Contract (e)	Field (f)	Parish (g)	Term (Yrs) (h)	Annual Volume a/ (MMcf at 15.025) (i)	Initial Base Price (j)	Initial Base Price Plus Tax Reimbursement (k)	Average Base Price (l)	Average Base Price Plus Tax Reimbursement (m)
									(Cents per Mcf at 15.025 psia)			
United Fuel Gas Company												
Pan American Petroleum Corp.	16758	3/10/61	240	10/2/58	Florence	Vermilion	20	784.4	17.60	19.10	20.2	21.70
United Gas Pipe Line Company												
Bel Oil Corp. (Op.), et al.	60-280	3/10/61	10	1/20/60	N. W. Oberlin Area	Allen	20	135.6	18.50	20.375	20.9	22.575
Hunt, Haroldson L., Jr., Trust Estate	60-151	3/10/61	4	1/26/60	W. Pilgrim Church	Allen	20	1/	18.50	20.375	20.7	22.575
Hunt, H. L	60-152	3/10/61	32	1/26/60	W. Pilgrim Church	Allen	20	1/	18.50	20.375	20.7	22.575
Hunt, Lamar	60-150	3/10/61	8	1/26/60	W. Pilgrim Church	Allen	20	2,430.0	18.50	20.375	20.7	22.575

FA-4633

SOURCE

All contracts in South Louisiana filed with the Federal Power Commission for the sale of gas to interstate pipelines, which have a term of 15 years or longer (or life of reserves), have an average base price of 20 cents per Mcf or more, and which have been granted permanent certification by the FPC. All cases in which the Commission's order issuing the permanent certificate is under court or Commission review have been omitted from this listing.

FOOTNOTES

a/1960 volumes obtained from Form 2 reports of pipelines filed with the Federal Power Commission. For contracts where no 1960 deliveries were made, volume is based on estimated first-month deliveries as reported by producers at the time the contract was filed.

b/Tax reimbursement payable based on the severance tax charged by the State of Louisiana. The tax reimbursement shown is that to which the seller has been entitled since December 1, 1958 under the terms of his contract as filed with the Federal Power Commission. Cases in which a question has been raised by the FPC concerning interpretation of the tax reimbursement provisions of the contract as they relate to the severance tax have been footnoted.

c/The tax reimbursement filed for by the seller was suspended until 1/30/59 by the FPC order issued 1/28/59 in Docket No. G-17765 because of a question concerning interpretation of the tax reimbursement provisions of the contract as they relate to the severance tax.

d/Volume is included with the volume shown for Phillips Petroleum Co. Rate Schedule No. 301.

e/Volume is included with the volume shown for Lyons and Logan (Op.), et al. Rate Schedule No. 8.

f/Volume is included with the volume shown for Texaco Seaboard, Inc. Rate Schedule No. 23.

g/Buyer and seller are associated companies.

h/Volume is included with the volume shown for The British-American Oil Producing Co. Rate Schedule No. 31.

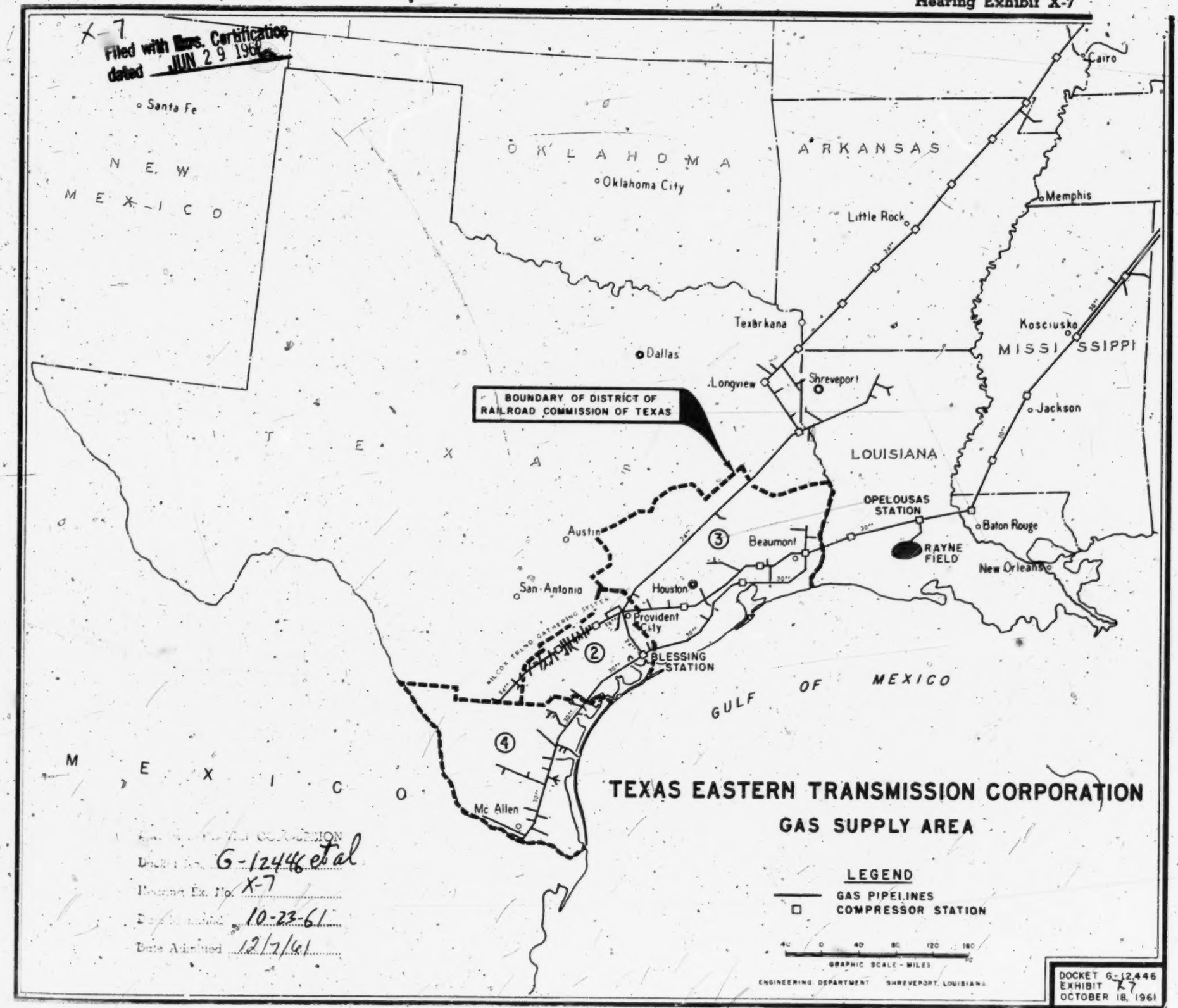
i/By order dated 12/23/59, the FPC conditionally accepted these rate schedules for filing because of a question concerning interpretation of the tax reimbursement provisions of the contracts as they relate to the severance tax.

j/Volume is included with the volume shown for H. L. Hunt Rate Schedule No. 30.

k/Volume is included with the volume shown for Southwest Gas Producing Co., Inc. (Op.), et al. Rate Schedule No. 12.

l/Volume is included with the volume shown for Lamar Hunt Rate Schedule No. 8.

m/The tax reimbursement filed for by the seller was suspended until 2/1/59 by FPC order issued 1/28/59 in Docket No. 17707 because of a question concerning interpretation of the tax reimbursement provisions of the contract as they relate to the severance tax.



Docket No. G-12446 et al
Exhibit No. X-7
Date Submitted 10-23-61
Date Admitted 12/7/61

Hearing Exhibit X-8

(3812)

Docket No. G-12446 et al.
Exhibit No. X-8

Filed with Fers. Certification
dated JUN 29 1964

TEXAS EASTERN TRANSMISSION CORPORATION

Rayne Field
Schedule of Activity in the Other Deferred Debits Account
Years 1961 Through 1989

Line No.	(A) Year	(B) Balance at Jan. 1	(C) Add Note Payments*	(D) Deduct Depletion of Gas Reserve*
1	1961	$ 470,000	$ 8,259,400	$ 6,492,600
2	1962	2,236,800	8,258,000	6,492,600
3	1963	4,002,200	8,254,500	6,492,600
4	1964	5,764,100	8,252,300	6,492,600
5	1965	7,523,800	8,251,000	6,492,600
6	1966	9,282,200	8,258,100	6,492,600
7	1967	11,047,700	8,254,500	6,492,600
8	1968	12,809,600	8,252,300	6,492,600
9	1969	14,569,300	8,251,000	6,492,600
10	1970	16,327,700	8,256,700	6,492,600
11	1971	18,091,800	8,252,000	6,492,600
12	1972	19,851,200	8,158,400	6,492,600
13	1973	21,517,000	8,052,100	6,492,600
14	1974	23,076,500	8,005,500	5,736,400
15	1975	25,345,600	2,001,200	4,772,100
16	1976	22,574,700	-	4,136,700
17	1977	18,438,000	-	3,582,300
18	1978	14,855,700	-	2,954,500
19	1979	11,901,200	-	2,550,600
20	1980	9,320,600	-	2,097,100
21	1981	7,223,500	-	1,772,400
22	1982	5,451,100	-	1,471,300
23	1983	3,979,800	-	901,800
24	1984	3,078,000	-	755,900
25	1985	2,322,100	-	626,200
26	1986	1,695,900	-	570,400
27	1987	1,125,500	-	511,700
28	1988	613,800	-	324,700
29	1989	289,100	-	289,100
	Totals		$117,017,000	$117,487,000

*Based on Production Estimated on Exhibit X-2, Page 2, Docket No. G-12446.

G-12446 et al.

Hearing Exhibit X-9 (3813)

Filed with Fed. Power Commission dated JUN 29 1962

Docket No. G-12446 et al.
Exhibit No. X-9

TEXAS EASTERN TRANSMISSION CORPORATION

Statement of Rayne Field Properties included in Gas Plant in Service and the related Reserves for Depreciation, Depletion and Amortization
December 31, 1960

Rayne Field properties and the related reserves for depreciation, depletion and amortization which were on the Company's books as of December 31, 1960 are as follows:

	Plant	Reserves
Producing Leaseholds	$ 8,471,200	$ 514,900
Producing Gas Wells - Well Constr.	481,300	10,500
Structures, Equip. & Rights-of-Way	5,243,000	568,400
Totals	$ 14,195,500	$ 1,093,800

FEDERAL POWER COMMISSION
Docket No. G-12446 et al
Exhibit X-9.
Date 11-29-61
Page 12/7/61

Hearing Exhibit X-10

(3814)

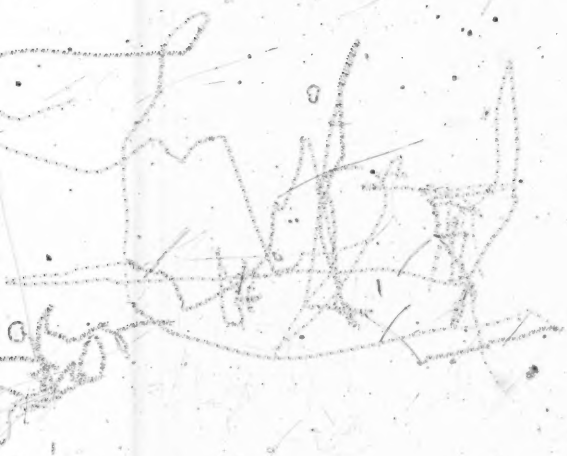
Docket No. G-12446 et al.
Exhibit No. X-10

filed with Exrs. Certification
dated JUN 29 1962

TEXAS EASTERN TRANSMISSION CORPORATION
Rayne Field
Balances of Tangible Plant, Natural Gas
Producing Leaseholds and Intangible Drilling Costs
Less Applicable Reserves at January 1 Each Year
For The Years 1961 Through 1989

Line No.	(A) Year	(B) Balance of Tangible Plant	(C) Balance of Nat'l Gas Prod.. Leaseholds	(D) Balance of Intangible Drilling Costs	(E) Total
1	1961	$ 4,674,600	$ 7,956,300	$ 470,800	$13,101,700
2	1962	4,477,000	7,516,600	444,800	12,438,400
3	1963	4,715,100	7,076,900	918,800	12,710,800
4	1964	4,422,100	6,637,200	861,700	11,921,000
5	1965	4,129,100	6,197,500	804,600	11,131,200
6	1966	3,836,100	5,757,800	747,500	10,341,400
7	1967	3,543,100	5,318,100	690,400	9,551,600
8	1968	3,250,100	4,878,400	633,300	8,761,800
9	1969	2,957,100	4,438,700	576,200	7,972,000
10	1970	2,664,100	3,999,000	519,600	7,182,700
11	1971	2,371,100	3,559,300	462,100	6,392,500
12	1972	2,328,200	3,119,600	655,100	6,102,900
13	1973	2,284,300	2,679,900	813,600	5,777,800
14	1974	1,925,600	2,240,200	680,100	4,845,900
15	1975	1,591,700	1,851,800	562,200	4,005,700
16	1976	1,314,000	1,528,600	464,100	3,306,700
17	1977	1,140,700	1,248,500	536,500	2,925,700
18	1978	986,600	1,005,900	589,800	2,582,300
19	1979	790,400	805,900	472,500	2,068,800
20	1980	664,000	631,200	475,000	1,770,200
21	1981	627,100	489,200	630,600	1,746,900
22	1982	540,700	369,200	633,400	1,543,300
23	1983	439,800	269,600	568,300	1,277,700
24	1984	340,100	208,500	439,500	988,100
25	1985	256,600	157,300	331,500	745,400
26	1986	187,400	114,900	242,100	544,400
27	1987	124,400	76,300	160,600	361,300
28	1988	67,800	41,600	87,500	196,900
29	1989	31,900	19,600	41,100	92,600

FEDERAL POWER COMMISSION
Docket No. G-12446 et al.
Exhibit No. X-10
Witness
11-29-61
12/7/61



Hearing Exhibit X-11 **(3815)**

Filed with Govs. Commission dated JUN 29 1962

Docket No. G-12446 et al.
Exhibit No. X-41

FEDERAL POWER COMMISSION
Docket No. G-12446 et al
Exhibit No. X-11
Date Received 11-29-61
Date Admitted 12/7/61

TEXAS EASTERN TRANSMISSION CORPORATION

Rayne Field
Net Liquids Revenues
Years 1961 Through 1989

Line No.	(A) Year	(B) Non-Recoverable Oper. & Maint. Expense (1)	(C) Liquids Revenue - Credit Separator (2)	(D) Liquids Revenue - Credit Natural Gas (3)	(E) Net Liquids Revenues
1	1961	$ -	$ -	$ -	$ -
2	1962	-	-	-	-
3	1963	-	-	-	-
4	1964	-	-	-	-
5	1965	-	-	-	-
6	1966	-	-	-	-
7	1967	-	-	-	-
8	1968	-	-	-	-
9	1969	-	-	-	-
10	1970	100	800	200	(900)
11	1971	200	900	300	(1,000)
12	1972	13,100	48,500	13,900	(49,300)
13	1973	25,300	81,500	24,600	(80,800)
14	1974	27,500	79,400	24,400	(76,300)
15	1975	693,000	1,802,500	564,700	(1,674,200)
16	1976	796,900	1,847,400	588,000	(1,638,500)
17	1977	766,900	1,592,000	511,900	(1,337,000)
18	1978	707,200	1,308,200	420,500	(1,021,500)
19	1979	659,200	1,170,800	376,200	(887,800)
20	1980	629,400	975,100	313,700	(659,400)
21	1981	545,500	842,300	271,400	(568,200)
22	1982	497,500	695,500	223,100	(421,100)
23	1983	467,700	447,100	136,900	(116,300)
24	1984	305,700	373,900	113,700	(181,900)
25	1985	275,800	310,500	94,500	(129,200)
26	1986	275,800	281,400	85,500	(91,100)
27	1987	275,800	251,100	76,300	(51,600)
28	1988	210,000	187,000	59,000	(36,000)
29	1989	209,800	166,400	52,500	(9,100)
	Totals	$ 7,382,400	$12,462,300	$ 3,951,300	$(9,031,200)

(1) Sum of non-recoverable amounts (after production payments) shown on pages 8, 9 and 14 of Exhibit X-5.
(2) From Exhibit X-5, page 10 (after production payments).
(3) From Exhibit X-5, page 11, 60% of net interest in production (after production payments).

Filed with F
dated ___

TEXAS EASTERN TRANSMISSION CORPORATION

Schedule of Rayne Field Note Payments
Based on Production Estimated on Exhibit X-2, Page 2, Docket No. G-12446

Line No.	(A) Calendar Year	(B) Conoco, et al No. of Installments	(C) Conoco, et al Amount	(D) Dishman, et al No. of Installments	(E) Dishman, et al Amount	(F) Kirby No. of Installments	(G) Kirby Amount	(H) Muller No. of Installments	(I) Muller Amount
1	1959 - Regular Installments	3	$ 1,570,899.00	3	$ 13,574.19	3	$ 8,613.66	3	$ 16,979.82
2	1960 - Regular Installments	12	6,283,596.00	12	54,296.76	12	34,454.64	12	67,919.28
3	1960 - Accelerated Installments	-	-	-	-	2	7,391.32	-	-
4	1961 - Regular Installments	12	6,714,063.00	12	58,215.87	12	36,941.55	12	72,821.67
5	1961 - Accelerated Installments	2	1,334,244.00	2	11,647.94	5	18,478.30	1	7,285.15
6	1962 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84
7	1962 - Accelerated Installments	-	-	2	11,647.94	2	7,395.85	4	29,140.60
8	1963 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84
9	1963 - Accelerated Installments	-	-	2	11,647.94	3	11,100.57	3	21,855.45
10	1964 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84
11	1964 - Accelerated Installments	-	-	1	5,823.97	2	7,400.38	4	29,176.28
12	1965 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84
13	1965 - Accelerated Installments	-	-	2	11,655.07	2	7,400.38	3	21,882.21
14	1966 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84
15	1966 - Accelerated Installments	-	-	2	11,662.20	2	7,400.38	4	29,176.28
16	1967 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84
17	1967 - Accelerated Installments	-	-	2	11,662.20	3	11,100.57	3	21,882.21
18	1968 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84
19	1968 - Accelerated Installments	-	-	1	5,831.10	2	7,400.38	4	29,176.28
20	1969 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84
21	1969 - Accelerated Installments	-	-	2	11,662.20	2	7,400.38	3	21,882.21
22	1970 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84
23	1970 - Accelerated Installments	-	-	2	11,662.20	2	7,400.38	4	29,176.28
24	1971 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84
25	1971 - Accelerated Installments	-	-	2	11,662.20	3	11,100.57	3	21,882.21
26	1972 - Regular Installments	12	8,005,464.00	12	69,973.20	9	33,301.71	5	36,470.35
27	1972 - Accelerated Installments	-	-	1	5,831.10	2	7,400.38	-	-
28	1973 - Regular Installments	12	8,005,464.00	7	40,817.70	-	-	-	-
29	1973 - Accelerated Installments	-	-	1	5,831.10	-	-	-	-
30	1974 - Regular Installments	12	8,005,464.00	-	-	-	-	-	-
31	1974 - Accelerated Installments	-	-	-	-	-	-	-	-
32	1975 - Regular Installments	3	2,001,366.00	-	-	-	-	-	-
33	1975 - Accelerated Installments	-	-	-	-	-	-	-	-
	Total	188	$121,975,200.00	188	$1,064,836.88	188	$675,704.20	188	$1,331,994.68

Filed with Exec. Certification
dated JUN 29 196

Docket No. G-12446 et al.
Exhibit No. X-12

TEXAS EASTERN TRANSMISSION CORPORATION

Schedule of Rayne Field Note Payments
Based on Production Estimated on Exhibit X-2, Page 2, Docket No. G-12446

(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)
Conoco, et al		Dishman, et al		Kirby		Muller		Texas Gas		
No. of Installments	Amount	No. of Installments	Amount	No. of Installments	Amount	No. of Installments	Amount	No. of Installments	Amount	Total Amount
3	$ 1,579,899.00	3	$ 13,574.19	3	$ 8,613.66	3	$ 16,979.82	3	$ 414.42	$ 1,610,481.09
12	6,283,596.00	12	54,296.76	12	34,454.64	12	67,919.28	12	1,657.68	6,441,924.36
-	-	-	-	2	7,391.32	-	-	19	3,380.81	10,772.13
12	6,714,063.00	12	58,215.87	12	36,941.55	12	72,821.67	12	1,777.35	6,883,819.44
2	1,334,244.00	2	11,647.94	5	18,478.30	1	7,285.15	22	3,916.66	1,375,572.05
12	8,005,[illegible].00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
-	-	2	11,647.94	2	7,395.85	4	29,140.60	2	356.06	48,540.45
12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
-	-	2	11,647.94	3	11,100.57	3	21,855.45	2	356.06	44,960.02
12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
-	-	1	5,823.97	2	7,400.38	4	29,176.28	2	356.06	42,756.69
12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
-	-	2	11,655.07	2	7,400.38	3	21,882.21	3	534.09	41,471.75
12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
-	-	2	11,662.20	2	7,400.38	4	29,176.28	2	356.06	48,594.92
12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
-	-	2	11,662.20	3	11,100.57	3	21,882.21	2	356.06	45,001.04
12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
-	-	1	5,831.10	2	7,400.38	4	29,176.28	2	356.06	42,763.82
12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
-	-	2	11,662.20	2	7,400.38	3	21,882.21	3	534.09	41,478.88
12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	8	1,068.18	8,208,436.50
-	-	2	11,662.20	2	7,400.38	4	29,176.28	-	-	48,238.86
12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	-	-	8,207,368.32
-	-	2	11,662.20	3	11,100.57	3	21,882.21	-	-	44,644.98
12	8,005,464.00	12	69,973.20	9	33,301.71	5	36,470.35	-	-	8,145,209.26
-	-	1	5,831.10	2	7,400.38	-	-	-	-	13,231.48
12	8,005,464.00	7	40,817.70	-	-	-	-	-	-	8,046,281.70
-	-	1	5,831.10	-	-	-	-	-	-	5,831.10
12	8,005,464.00	-	-	-	-	-	-	-	-	8,005,464.00
-	-	-	-	-	-	-	-	-	-	-
3	2,001,366.00	-	-	-	-	-	-	-	-	2,001,366.00
-	-	-	-	-	-	-	-	-	-	-
188	$121,975,200.00	188	$1,064,836.88	188	$675,704.20	188	$1,331,994.68	188	$32,510.52	$125,080,246.28

FEDERAL POWER COMMISSION
Docket No. G-12446 et al
Hearing Ex. No. X-12
Date Identified 11-29-61
Date Admitted 12/7/61

Filed with Exrs. Cert
dated JUN 29 19

TEXAS EASTERN TRANSMISSION CORPORATION

Schedule of Rayne Field Note Payments
Assuming No Accelerated Installments

Line No.	(A) Calendar Year	(B) Conoco, et al No. of Installments	(C) Conoco, et al Amount	(D) Dishman, et al No. of Installments	(E) Dishman, et al Amount	(F) Kirby No. of Installments	(G) Kirby Amount	(H) Muller No. of Installments	(I) Muller Amount	(J) To No. of Installm
1	1959 - Regular Installments	3	$ 1,570,899.00	3	$ 13,574.19	3	$ 8,613.66	3	$ 16,979.82	3
2	1960 - Regular Installments	12	6,283,596.00	12	54,296.76	12	34,454.64	12	67,919.28	12
3	1960 - Accelerated Installments	-	-	-	-	-	-	-	-	-
4	1961 - Regular Installments	12	6,714,063.00	12	58,215.87	12	36,941.55	12	72,821.67	12
5	1961 - Accelerated Installments	-	-	-	-	-	-	-	-	-
6	1962 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12
7	1962 - Accelerated Installments	-	-	-	-	-	-	-	-	-
8	1963 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12
9	1963 - Accelerated Installments	-	-	-	-	-	-	-	-	-
10	1964 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12
11	1964 - Accelerated Installments	-	-	-	-	-	-	-	-	-
12	1965 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12
13	1965 - Accelerated Installments	-	-	-	-	-	-	-	-	-
14	1966 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12
15	1966 - Accelerated Installments	-	-	-	-	-	-	-	-	-
16	1967 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12
17	1967 - Accelerated Installments	-	-	-	-	-	-	-	-	-
18	1968 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12
19	1968 - Accelerated Installments	-	-	-	-	-	-	-	-	-
20	1969 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12
21	1969 - Accelerated Installments	-	-	-	-	-	-	-	-	-
22	1970 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12
23	1970 - Accelerated Installments	-	-	-	-	-	-	-	-	-
24	1971 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12
25	1971 - Accelerated Installments	-	-	-	-	-	-	-	-	-
26	1972 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12
27	1972 - Accelerated Installments	-	-	-	-	-	-	-	-	-
28	1973 - Regular Installments	12	8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12
29	1973 - Accelerated Installments	-	-	-	-	-	-	-	-	-
30	1974 - Regular Installments	12	8,005,464.00	12	69,951.81	12	44,388.69	12	87,502.08	12
31	1974 - Accelerated Installments	-	-	-	-	-	-	-	-	-
32	1975 - Regular Installments	5	3,335,660.00	5	29,119.85	5	18,478.30	5	36,425.75	5
33	1975 - Accelerated Installments	-	-	-	-	-	-	-	-	-
	Total	188	$121,975,200.00	188	$1,054,836.88	188	$675,704.20	188	$1,331,994.68	188

Docket No. G-12446 et al.
Exhibit No. X-13

Filed with Exm. Certification dated JUN 29 1962

TEXAS EASTERN TRANSMISSION CORPORATION

Schedule of Rayne Field Note Payments
Assuming No Accelerated Installments

(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)
co, al	Dishman, et al		Kirby		Muller		Texas Gas		
Amount	No. of Installments	Amount	No. of Installments	Amount	No. of Installments	Amount	No. of Installments	Amount	Total Amount
$ 1,570,899.00	3	$ 13,574.19	3	$ 8,613.66	3	$ 16,979.82	3	$ 414.42	$ 1,610,481.09
6,283,596.00	12	54,296.76	12	34,454.64	12	67,919.28	12	1,657.68	6,441,924.36
6,714,063.00	12	58,215.87	12	36,941.55	12	72,821.67	12	1,777.35	6,883,819.44
8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
8,005,464.00	12	69,973.20	12	44,402.28	12	87,528.84	12	2,136.36	8,209,504.68
8,005,464.00	12	69,951 91	12	44,388.69	12	87,502.08	12	2,135.70	8,209,442.28
3,335,660.00	5	29,119.85	5	18,478.30	5	36,425.75	5	889.05	3,420,522.95
$121,975,200.00	188	$1,064,836.88	188	$675,704.20	188	$1,331,994.68	188	$32,510.52	$125,080,246.28

FEDERAL POWER COMMISSION
Docket No. G-12446 et al
Hearing Exh. No. X-13
Date Identified 11-29-61
Date Admitted 12/7/61

Filed with Exrs. Certification
JUN 29 196

TEXAS EASTERN TRANSMISSION CORPORATION
Rayne Field
Cost of Gas Per Exhibit X-4 Adjusted to Include
Outside Interests Gas as well as Louisiana Severance Tax
Years 1961 Through 1989

Line No.	(A) Year	(B) Production (MMCF) Working Interest (1)	(C) Production (MMCF) Other Interest (1)	(D) Production (MMCF) Total	(E) Total Cost of Gas (Exh. X-4)	(F) Include Outside Interest Gas: Outside Int. @22.1563¢/MCF	(G) Include Outside Interest Gas: Adjusted Total (E) + (F)	(H) Cost Per MCF (2)
1	1961	41,691	9,409	51,100	$ 7,216,600	$ 2,084,700	$ 9,301,300	18.20¢
2	1962	41,691	9,409	51,100	7,220,200	2,084,700	9,304,900	18.21¢
3	1963	41,691	9,409	51,100	7,282,400	2,084,700	9,367,100	18.33¢
4	1964	41,691	9,409	51,100	7,282,400	2,084,700	9,367,100	18.33¢
5	1965	41,691	9,409	51,100	7,282,400	2,084,700	9,367,100	18.33¢
6	1966	41,691	9,409	51,100	7,282,400	2,084,700	9,367,100	18.33¢
7	1967	41,691	9,409	51,100	7,282,400	2,084,700	9,367,100	18.33¢
8	1968	41,691	9,409	51,100	7,282,400	2,084,700	9,367,100	18.33¢
9	1969	41,691	9,409	51,100	7,282,400	2,084,700	9,367,100	18.33¢
10	1970	41,691	9,409	51,100	7,281,500	2,084,700	9,366,200	18.33¢
11	1971	41,691	9,409	51,100	7,281,400	2,084,700	9,366,100	18.33¢
12	1972	41,691	9,409	51,100	7,303,400	2,084,700	9,388,100	18.37¢
13	1973	41,691	9,409	51,100	7,359,800	2,084,700	9,444,500	18.48¢
14	1974	36,835	8,313	45,148	6,500,300	1,841,900	8,342,200	18.48¢
15	1975	30,643	6,915	37,558	3,796,900	1,532,100	5,329,000	14.19¢
16	1976	26,563	5,994	32,557	3,104,200	1,328,000	4,432,200	13.61¢
17	1977	23,003	5,191	28,194	2,813,700	1,150,100	3,963,800	14.06¢
18	1978	18,972	4,282	23,254	2,446,500	948,700	3,395,200	14.60¢
19	1979	16,571	3,740	20,311	2,141,400	828,600	2,970,000	14.62¢
20	1980	13,466	3,039	16,505	1,836,000	673,300	2,509,300	15.20¢
21	1981	11,381	2,568	13,949	1,632,800	569,000	2,201,800	15.78¢
22	1982	9,448	2,132	11,580	1,465,800	472,400	1,938,200	16.74¢
23	1983	5,791	1,307	7,098	1,075,100	289,600	1,364,700	19.23¢
24	1984	4,854	1,096	5,950	816,700	242,800	1,059,500	17.81¢
25	1985	4,021	907	4,928	698,000	201,000	899,000	18.24¢
26	1986	3,663	827	4,490	662,400	183,200	845,600	18.83¢
27	1987	3,286	742	4,028	624,500	164,400	788,900	19.59¢
28	1988	2,085	470	2,555	393,000	104,100	497,100	19.46¢
29	1989	1,855	418	2,273	372,600	92,600	465,200	20.47¢
	Totals	754,420	170,258	924,678	$125,019,600	$37,722,900	$162,742,500	17.60¢

(1) Working Interest = 81.58729%; Outside Interests = 18.41271% per Exhibit X-5, Page 13.
(2) Based on total production in Column D.

Hearing Exhibit X-14 (3818)
Docket No. G-12446 et al.
Exhibit No. X-14

FEDERAL POWER COMMISSION
Docket No. G-12446 et al
Hearing No. X-14
Date Rec'd 11-29-61
Date Filed 12/7/61

TEXAS EASTERN TRANSMISSION CORPORATION
Rayne Field
Cost of Gas Per Exhibit X-4 Adjusted to Include
Outside Interests Gas as well as Louisiana Severance Tax
Years 1961 Through 1989

(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)
(MMCF)			Include Outside Interest Gas		Include La. Severance Tax		
(1) t Total	Total Cost of Gas (Exh. X-4)	Outside Int. @22.1563¢/MCF	Adjusted Total (E) + (F)	Cost Per MCF(2)	Tax @2.2548¢ Per W.I. MCF	Adjusted Total (G) + (I)	Cost Per MCF(2)
09 51,100	$ 7,216,600	$ 2,084,700	$ 9,301,300	18.20¢	$ 940,100	$ 10,241,400	20.04¢
09 51,100	7,220,200	2,084,700	9,304,900	18.21¢	940,100	10,245,000	20.05¢
09 51,100	7,282,400	2,084,700	9,367,100	18.33¢	940,100	10,307,200	20.17¢
09 51,100	7,282,400	2,084,700	9,367,100	18.33¢	940,000	10,307,100	20.17¢
09 51,100	7,282,400	2,084,700	9,367,100	18.33¢	940,000	10,307,100	20.17¢
09 51,100	7,282,400	2,084,700	9,367,100	18.33¢	940,000	10,307,100	20.17¢
09 51,100	7,282,400	2,084,700	9,367,100	18.33¢	940,000	10,307,100	20.17¢
09 51,100	7,282,400	2,084,700	9,367,100	18.33¢	940,000	10,307,100	20.17¢
09 51,100	7,282,400	2,084,700	9,367,100	18.33¢	940,000	10,307,100	20.17¢
09 51,100	7,281,500	2,084,700	9,366,200	18.33¢	940,000	10,306,200	20.17¢
09 51,100	7,281,400	2,084,700	9,366,100	18.33¢	940,000	10,306,100	20.17¢
09 51,100	7,303,400	2,084,700	9,388,100	18.37¢	940,000	10,328,100	20.21¢
09 51,100	7,359,800	2,084,700	9,444,500	18.48¢	940,000	10,384,500	20.32¢
13 45,148	6,500,300	1,841,900	8,342,200	18.48¢	830,600	9,172,800	20.32¢
15 37,558	3,796,900	1,532,100	5,329,000	14.19¢	691,000	6,020,000	16.03¢
94 32,557	3,104,200	1,328,000	4,432,200	13.61¢	599,000	5,031,200	15.45¢
91 28,194	2,813,700	1,150,100	3,963,800	14.06¢	518,700	4,482,500	15.90¢
32 23,254	2,446,500	948,700	3,395,200	14.60¢	427,800	3,823,000	16.44¢
40 20,311	2,141,400	828,600	2,970,000	14.62¢	373,700	3,343,700	16.46¢
39 16,505	1,836,000	673,300	2,509,300	15.20¢	303,700	2,813,000	17.04¢
38 13,949	1,638,800	569,000	2,201,800	15.78¢	256,600	2,458,400	17.62¢
32 11,580	1,465,800	472,400	1,938,200	16.74¢	213,000	2,151,200	18.58¢
07 7,098	1,075,100	289,600	1,364,700	19.23¢	130,600	1,495,300	21.07¢
06 5,950	816,700	242,800	1,059,500	17.81¢	109,500	1,169,000	19.65¢
07 4,928	698,000	201,000	899,000	18.24¢	90,700	989,700	20.08¢
27 4,490	662,400	183,200	845,600	18.83¢	82,600	928,200	20.67¢
42 4,028	624,500	164,400	788,900	19.59¢	74,100	863,000	21.43¢
70 2,555	393,000	104,100	497,100	19.46¢	47,000	544,100	21.30¢
68 2,273	372,600	92,600	465,200	20.47¢	41,800	507,000	22.31¢
68 924,678	$125,019,600	$37,722,900	$162,742,500	17.60¢	$17,010,700	$179,753,200	19.44¢

Outside Interests = 18.41271% per Exhibit X-5, Page 13.

TEXAS EASTERN TRANSMISSION CORPORATION
COST OF SERVICE STUDY
RAYNE FIELD
CASE 1

	(A)	(B)	(C)	(D)	(E)	(F)	(G)
	YEAR	TOTAL COST OF GAS PER EXHIBIT X-4	ADD RETURN @ 6%	ADD FED. INCOME TAX REQ. TO RETURN	TOTAL COST OF SERVICE	COST OF SERVICE PER MCF @ 14.73#	COST OF SERVICE PER MCF @ 15.025#
1	1961	$ 7,216,600	$ 786,100	$ 411,600	$ 8,414,300	20.186¢	20.584¢
2	1962	7,220,200	746,300	390,800	8,357,300	20.051¢	20.450¢
3	1963	7,282,400	762,700	399,300	8,444,400	20.258¢	20.664¢
4	1964	7,282,400	715,300	374,500	8,372,200	20.085¢	20.488¢
5	1965	7,282,400	667,900	349,700	8,300,000	19.911¢	20.311¢
6	1966	7,282,400	620,500	324,900	8,227,800	19.738¢	20.14¢
7	1967	7,282,400	573,100	300,100	8,155,600	19.564¢	19.954¢
8	1968	7,282,400	525,700	275,300	8,083,400	19.391¢	19.78¢
9	1969	7,282,400	478,300	250,500	8,011,200	19.22¢	19.607¢
10	1970	7,281,500	430,900	225,700	7,938,100	19.044¢	19.426¢
11	1971	7,281,400	383,500	200,800	7,865,700	18.87¢	19.253¢
12	1972	7,303,400	366,200	191,700	7,861,300	18.86¢	19.243¢
13	1973	7,359,800	346,600	181,500	7,887,900	18.923¢	19.307¢
14	1974	6,500,300	290,700	152,200	6,943,200	18.854¢	19.23¢
15	1975	3,796,900	240,300	125,800	4,163,000	13.594¢	13.86¢
16	1976	3,104,200	198,400	103,900	3,406,500	12.826¢	13.08¢
17	1977	2,813,700	175,600	91,900	3,081,200	13.396¢	13.66¢
18	1978	2,446,500	154,900	81,100	2,682,500	14.196¢	14.42¢
19	1979	2,141,400	124,100	65,000	2,330,500	14.066¢	14.30¢
20	1980	1,836,000	106,200	55,600	1,997,800	14.84¢	15.14¢
21	1981	1,632,800	104,800	54,900	1,792,500	15.75¢	16.07¢
22	1982	1,465,800	92,600	48,500	1,606,900	17.01¢	17.35¢
23	1983	1,075,100	76,700	40,100	1,191,900	20.58¢	20.99¢
24	1984	816,700	59,300	31,000	907,000	18.69¢	19.06¢
25	1985	698,000	44,700	23,400	766,100	19.05¢	19.43¢
26	1986	662,400	32,700	17,100	712,200	19.44¢	19.83¢
27	1987	624,500	21,700	11,400	657,600	20.01¢	20.41¢
28	1988	395,000	11,800	6,200	411,000	19.71¢	20.10¢
29	1989	372,600	5,600	2,900	381,100	20.54¢	20.95¢
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31	TOTALS	$125,019,600	$ 9,143,200	$ 4,787,400	138,950,200	18.42¢	18.79¢
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TEXAS EASTERN TRANSMISSION CORPORATION
COST OF SERVICE STUDY
RAYNE FIELD
CASE 1

Hearing Exhibit X-15- (3819)
DOCKET NOS. G-12446 ET AL
EXHIBIT NO. X-15

Filed with Corr. Certification dated JUN 29 1962

(B) Total Cost of Gas per Exhibit X-4	(C) Add Return @ 6%	(D) Add Fed. Income Tax on Return	(E) Total Cost of Service	(F) Cost of Service per MCF @ 14.73#	(G) Cost of Service per MCF @ 15.025#
$ 7,216,600	$ 786,100	$ 411,600	$ 8,414,300	20.18¢	20.58¢
7,220,200	746,300	390,800	8,357,300	20.05¢	20.45¢
7,282,400	762,700	399,300	8,444,400	20.35¢	20.66¢
7,282,400	715,300	374,500	8,372,200	20.08¢	20.49¢
7,282,400	667,900	349,700	8,300,000	19.91¢	20.31¢
7,282,400	620,500	324,900	8,227,800	19.74¢	20.14¢
7,282,400	573,100	300,400	8,155,900	19.56¢	19.95¢
7,282,400	525,700	275,300	8,083,400	19.39¢	19.78¢
7,282,400	478,300	250,500	8,011,200	19.22¢	19.60¢
7,288,500	430,900	225,700	7,938,100	19.04¢	19.42¢
7,281,400	383,500	200,800	7,865,700	18.87¢	19.25¢
7,303,400	366,200	191,700	7,861,300	18.86¢	19.24¢
7,359,800	346,600	181,500	7,887,900	18.92¢	19.30¢
6,500,300	290,700	152,200	6,943,200	18.85¢	19.23¢
3,796,900	240,300	125,800	4,163,000	13.59¢	13.86¢
3,104,200	198,400	103,900	3,406,500	12.82¢	13.08¢
2,813,700	175,600	91,900	3,081,200	13.39¢	13.66¢
2,446,500	134,900	81,100	2,682,500	14.14¢	14.42¢
2,141,400	124,100	65,000	2,330,500	14.06¢	14.34¢
1,836,000	106,200	55,600	1,997,800	14.84¢	15.14¢
1,632,800	104,800	54,900	1,792,500	15.75¢	16.07¢
1,465,800	92,600	48,500	1,606,900	17.01¢	17.35¢
1,075,100	76,700	40,100	1,191,900	20.58¢	20.99¢
816,700	59,300	31,000	907,000	18.69¢	19.06¢
698,000	44,700	23,400	766,100	19.05¢	19.43¢
642,400	32,700	17,100	712,200	19.44¢	19.83¢
624,500	21,700	11,400	657,600	20.01¢	20.41¢
393,000	11,800	6,200	411,000	19.71¢	20.10¢
372,600	5,600	2,900	381,100	20.54¢	20.95¢
$125,019,600	$ 9,143,200	$ 4,787,400	138,950,200	18.42¢	18.79¢

TEXAS EASTERN TRANSMISSION CORPORATION
COST OF SERVICE STUDY
RAYNE FIELD
CASE 2

Filed with dated

	(A)	(B)	(C)	(D)	(E)	(F)	(G)
	YEAR	TOTAL COST OF GAS PER EXHIBIT X-4	ADD LA. SEVERANCE TAX ON W.I GAS (1)	TOTAL COST OF GAS BEFORE RETURN & F.I.T.	ADD RETURN AT 6%	ADD FED. INCOME TAX RE. RETURN	TOTAL COST OF SERVICE
1	1961	$ 7 216 600	$ 940 100	$ 8 156 700	$ 786 100	$ 411 600	$ 9 354 400
2	1962	7 220 200	940 100	8 160 300	746 300	390 800	9 297 400
3	1963	7 282 400	940 100	8 222 500	762 700	399 300	9 384 500
4	1964	7 282 400	940 000	8 222 400	715 300	374 500	9 312 200
5	1965	7 282 400	940 000	8 222 400	667 800	349 700	9 240 000
6	1966	7 282 400	940 000	8 222 400	620 500	324 900	9 167 800
7	1967	7 282 400	940 000	8 222 400	573 100	300 100	9 095 600
8	1968	7 282 400	940 000	8 222 400	525 700	275 300	9 023 400
9	1969	7 282 400	940 000	8 222 400	478 300	250 500	8 951 200
10	1970	7 281 500	940 000	8 221 500	430 900	225 700	8 878 100
11	1971	7 281 400	940 000	8 221 400	383 500	200 800	8 805 700
12	1972	7 303 400	940 000	8 243 400	366 200	191 700	8 801 300
13	1973	7 359 800	940 000	8 299 800	346 600	181 500	8 827 900
14	1974	6 500 300	830 600	7 330 900	290 700	152 200	7 773 800
15	1975	3 796 900	691 000	4 487 900	240 300	125 800	4 854 000
16	1976	3 104 200	599 000	3 703 200	198 400	103 900	4 005 500
17	1977	2 813 700	518 700	3 332 400	175 600	91 900	3 599 900
18	1978	2 446 500	427 800	2 874 300	154 900	81 100	3 110 300
19	1979	2 141 400	373 700	2 515 100	124 100	65 000	2 704 200
20	1980	1 836 000	303 700	2 139 700	106 200	55 600	2 301 500
21	1981	1 632 800	256 600	1 889 400	104 800	54 900	2 049 100
22	1982	1 465 800	213 000	1 678 800	92 600	48 500	1 819 900
23	1983	1 075 100	130 600	1 205 700	76 700	40 100	1 322 500
24	1984	816 700	109 500	926 200	59 300	31 000	1 016 500
25	1985	698 000	90 700	788 700	44 700	23 400	856 800
26	1986	662 400	82 600	745 000	32 700	17 100	794 800
27	1987	624 500	74 100	698 600	21 700	11 400	731 700
28	1988	393 000	47 000	440 000	11 800	6 200	458 000
29	1989	372 600	41 800	414 400	5 600	2 900	422 900
30							
31	TOTALS	$125 019 600	$17 010 700	$142 030 300	$ 9 143 200	$ 4 787 400	$155 960 900

(1) At 2.2548¢ per W.I. MCF (Equivalent to 2.34 @ 15.025#)

Hearing Exhibit X-16 (3820)

Docket Nos. G-12446 ET AL
Exhibit No. X-16

Filed with Secs. Commission
dated JUN 29 1962

TEXAS EASTERN TRANSMISSION CORPORATION
COST OF SERVICE STUDY
RAYNE FIELD
CASE 2

(B) Total Cost of Gas per Exhibit X-4	(C) Add La. Severance Tax on W.I. Gas (1)	(D) Total Cost of Gas Before Return & F.I.T.	(E) Add Return at 6%	(F) Add Fed. Income Tax re. Return	(G) Total Cost of Service	(H) Cost of Service per MCF @ 14.73 ¢	(I) Cost of Service per MCF @ 15.025 ¢
$ 7 216 600	$ 940 100	$ 8 156 700	$ 786 100	$ 411 600	$ 9 354 400	22.44¢	22.89¢
7 220 200	940 100	8 160 300	746 300	390 800	9 297 400	22.30	22.75
7 282 400	940 100	8 222 500	762 700	399 300	9 384 500	22.51	22.96
7 282 400	940 000	8 222 400	715 300	374 500	9 312 200	22.34	22.79
7 282 400	940 000	8 222 400	667 900	349 700	9 240 000	22.16	22.60
7 282 400	940 000	8 222 400	620 500	324 900	9 167 800	21.99	22.43
7 282 400	940 000	8 222 400	573 100	300 100	9 095 600	21.82	22.26
7 282 400	940 000	8 222 400	525 700	275 300	9 023 400	21.67	22.07
7 282 400	940 000	8 222 400	478 300	250 500	8 951 200	21.47	21.90
7 281 500	940 000	8 221 500	430 900	225 700	8 878 100	21.30	21.73
7 281 400	940 000	8 221 400	383 500	200 800	8 805 700	21.12	21.54
7 303 400	940 000	8 243 400	366 200	191 700	8 801 300	21.11	21.53
7 359 800	940 000	8 299 800	346 600	181 500	8 827 900	21.17	21.59
6 500 300	830 600	7 330 900	290 700	152 200	7 773 800	21.10	21.52
3 796 900	691 000	4 487 900	240 300	125 800	4 854 000	15.84	16.16
3 104 200	599 000	3 703 200	198 400	103 900	4 005 500	15.08	15.38
2 813 700	518 700	3 332 400	175 600	91 900	3 599 900	15.65	15.96
2 446 500	427 800	2 874 300	154 900	81 100	3 110 300	16.39	16.72
2 141 400	373 700	2 515 100	124 100	65 000	2 704 200	16.32	16.65
1 836 000	303 700	2 739 700	106 200	55 600	2 961 500	17.09	17.43
1 632 800	256 600	1 889 400	104 800	54 900	2 049 100	18.00	18.36
1 465 800	213 000	1 678 800	92 600	48 500	1 819 900	19.26	19.65
1 075 100	130 600	1 205 700	76 700	40 100	1 322 500	22.84	23.30
816 700	109 500	926 200	59 300	31 000	1 016 500	20.94	21.36
698 000	90 700	788 700	44 700	23 400	856 800	21.31	21.74
662 400	82 600	745 000	32 700	17 100	794 800	21.70	22.13
624 500	74 100	698 600	21 700	11 400	731 700	22.27	22.72
393 000	47 000	440 000	11 800	6 200	458 000	21.97	22.41
372 600	41 800	414 400	5 600	2 900	422 900	22.80	23.26
$ 125 019 600	$ 17 010 700	$ 142 030 300	$ 9 143 200	$ 4 787 400	$ 155 960 900	20.67	21.09

(1) 12 2.34 @ 15.025¢)

TEXAS EASTERN TRANSMISSION CORPORATION
COST OF SERVICE STUDY
RAYNE FIELD
CASE 3

Mod with Exhs. Ltr JUN 29

	(A) YEAR	(B) TOTAL COST OF GAS PER EXHIBIT X-4	(C) ADD LA. SEVERANCE TAX ON W.I. GAS (1)	(D) ADD ROYALTY AND OUTSIDE INT. GAS (2)	(E) TOTAL COST OF GAS BEFORE RETURN & F.I.T.	(F) ADD RETURN AT 6%	(G) ADD FED. INCOME TAX RE. RETURN	(H) TOTAL COST OF SERVICE
1	1961	$ 7 216 600	$ 940 100	$ 2 084 700	$ 10 241 400	$ 786 100	$ 411 600	$ 11 439 100
2	1962	7 220 200	940 100	2 084 700	10 245 000	746 300	390 800	11 382 100
3	1963	7 282 400	940 100	2 084 700	10 307 200	762 700	399 300	11 469 200
4	1964	7 282 400	940 000	2 084 700	10 307 100	715 300	374 500	11 396 900
5	1965	7 282 400	940 000	2 084 700	10 307 100	667 900	349 700	11 324 700
6	1966	7 282 400	940 000	2 084 700	10 307 100	620 500	324 900	11 252 500
7	1967	7 282 400	940 000	2 084 700	10 307 100	573 100	300 100	11 180 300
8	1968	7 282 400	940 000	2 084 700	10 307 100	525 700	275 300	11 108 100
9	1969	7 282 400	940 000	2 084 700	10 307 100	478 300	250 500	11 035 900
10	1970	7 281 500	940 000	2 084 700	10 306 200	430 900	225 700	10 962 800
11	1971	7 281 400	940 000	2 084 700	10 306 100	383 500	200 800	10 890 400
12	1972	7 303 400	940 000	2 084 700	10 328 100	366 200	191 700	10 886 000
13	1973	7 359 800	940 000	2 084 700	10 384 500	346 600	181 500	10 912 600
14	1974	6 500 300	830 600	1 841 900	9 172 800	290 700	152 200	9 615 700
15	1975	3 796 900	691 000	1 532 100	6 020 000	240 300	125 800	6 386 100
16	1976	3 104 200	599 000	1 328 000	5 031 200	198 400	103 900	5 333 500
17	1977	2 813 700	518 700	1 150 100	4 482 500	175 600	91 900	4 750 000
18	1978	2 446 500	427 800	948 700	3 823 000	154 900	81 100	4 059 000
19	1979	2 141 400	373 700	828 600	3 343 700	124 100	65 000	3 532 800
20	1980	1 836 000	303 700	673 300	2 813 000	106 200	55 600	2 974 800
21	1981	1 632 800	256 600	569 000	2 458 400	104 800	54 900	2 618 100
22	1982	1 465 800	213 000	472 400	2 151 200	92 600	48 500	2 292 300
23	1983	1 075 100	130 600	289 600	1 495 300	76 700	40 100	1 612 100
24	1984	816 700	109 500	242 800	1 169 000	59 300	31 000	1 259 300
25	1985	698 000	90 780	201 000	989 700	44 700	23 400	1 057 800
26	1986	662 400	82 600	183 200	928 200	32 700	17 100	978 000
27	1987	624 500	74 100	164 400	863 000	21 700	11 400	896 100
28	1988	393 000	47 000	104 100	544 100	11 800	6 200	562 100
29	1989	372 600	41 808	92 600	507 000	5 600	2 900	515 500
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31	TOTALS	$ 125 019 600	$ 17 010 700	$ 37 722 900	$ 179 753 200	$ 9 143 200	$ 4 787 400	$ 193 683 800
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(1) At 2.2548¢ per W.I. MCF (Equivalent to 2.3¢ @ 15.025#).

(2) At 22.1563¢ per MCF of Royalty and Outside Interest Gas (Equivalent to 22.6¢ @ 15.025#)

TEXAS EASTERN TRANSMISSION CORPORATION
COST OF SERVICE STUDY
RAYNE FIELD
CASE 3

Mod. with Exhibit 1-1 JUN 29 1962

DOCKET NOS. G-12446 ET AL
EXHIBIT NO. X-17

(B) Total Cost of Gas per Exhibit X-4	(C) ADD La. Severance Tax on N.I. Gas	(D) ADD Royalty and(2) Outside Int. Gas	(E) Total Cost of Gas Before Return & F.I.T.	(F) ADD Return at 6%	(G) ADD Fed. Income Tax Re. Return	(H) Total Cost of Service	(I) Cost of Service per MCF @ 14.73#	(J) Cost of Service per MCF @ 15.025#
$ 7 216 600	$ 940 100	$ 2 084 700	$ 10 241 400	$ 786 100	$ 411 600	$ 11 439 100	22.89¢	22.84¢
7 220 200	940 100	2 084 700	10 245 000	746 300	390 800	11 382 100	22.27¢	22.72¢
7 282 400	940 100	2 084 700	10 307 200	762 700	399 300	11 469 200	22.44¢	22.89¢
7 282 400	940 000	2 084 700	10 307 100	715 300	374 500	11 396 900	22.30¢	22.75¢
7 282 400	940 000	2 084 700	10 307 100	667 900	349 700	11 324 700	22.16¢	22.60¢
7 282 400	940 000	2 084 700	10 307 100	620 500	324 900	11 252 500	22.02¢	22.46¢
7 282 400	940 000	2 084 700	10 307 100	573 100	300 100	11 180 300	21.88¢	22.32¢
7 282 400	940 000	2 084 700	10 307 100	525 700	275 300	11 108 100	21.74¢	22.18¢
7 282 400	940 000	2 084 700	10 307 100	478 300	250 500	11 035 900	21.60¢	22.03¢
7 281 500	940 000	2 084 700	10 306 200	430 900	225 700	10 962 800	21.45¢	21.88¢
7 281 400	940 000	2 084 700	10 306 100	383 500	200 800	10 890 400	21.31¢	21.74¢
7 303 400	940 000	2 084 700	10 328 100	366 200	191 700	10 886 000	21.30¢	21.73¢
7 359 800	940 000	2 084 700	10 384 500	346 600	181 500	10 912 600	21.36¢	21.79¢
6 500 300	830 600	1 841 900	9 172 800	290 700	152 200	9 615 700	21.30¢	21.73¢
3 796 900	691 000	1 532 100	6 020 000	240 300	125 800	6 386 100	17.00¢	17.34¢
3 104 200	599 000	1 328 000	5 031 200	198 400	103 900	5 333 500	16.38¢	16.71¢
2 813 700	518 700	1 150 100	4 482 500	175 600	91 900	4 750 000	16.85¢	17.19¢
2 446 500	427 800	948 700	3 823 000	154 900	81 100	4 059 000	17.46¢	17.81¢
2 141 400	373 700	828 600	3 343 700	124 100	65 000	3 532 800	17.39¢	17.74¢
1 836 000	303 700	673 300	2 813 000	106 200	55 600	2 974 800	18.02¢	18.38¢
1 632 800	256 600	569 000	2 458 400	104 800	54 900	2 618 100	18.77¢	19.15¢
1 465 800	213 000	472 400	2 151 200	92 600	48 500	2 292 300	19.80¢	20.20¢
1 075 100	130 600	289 600	1 495 300	76 700	40 100	1 612 100	23.71¢	23.16¢
816 700	109 500	242 800	1 169 000	59 300	31 000	1 259 300	21.16¢	21.58¢
698 000	90 700	201 000	989 700	44 700	23 400	1 057 800	21.47¢	21.90¢
662 400	22 600	183 200	928 200	32 700	17 100	978 000	21.78¢	22.22¢
624 500	74 100	164 400	863 000	21 700	11 400	896 100	23.25¢	22.70¢
393 000	47 000	104 100	544 100	11 800	6 200	562 100	22.00¢	22.44¢
372 600	41 800	92 600	507 000	5 600	2 900	515 500	22.68¢	23.13¢
$ 125 019 600	$ 17 010 700	$ 37 722 900	$ 179 753 200	$ 9 143 200	$ 4 787 400	$ 193 683 800	28.95¢	21.37¢

3¢ @ 15.025#

Interest Gas (Equivalent To 22.6¢ @ 15.025#)

X-18

TEXAS EASTERN TRANSMISSION CORPORATION
COST OF SERVICE STUDY
RAYNE FIELD
CASE 4

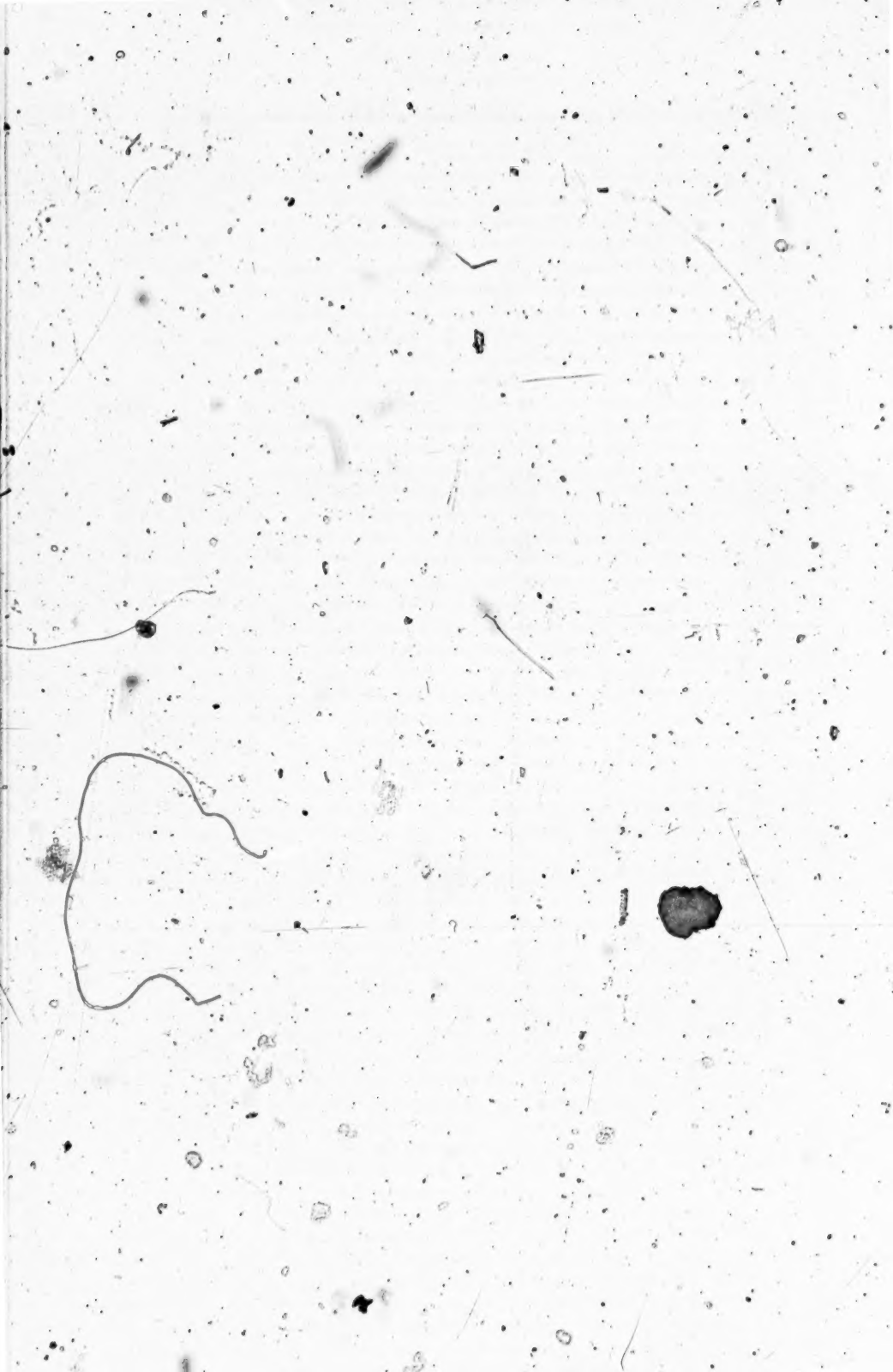
Filed with FPC docketed JI

	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(F)	(H)
			ADD			ADD		ADD	
	YEAR	TOTAL COST OF GAS PER EXHIBIT X-4	LA. SEVERANCE TAX ON W.I. GAS	ROYALTY AND OUTSIDE INT. GAS	TOTAL COST OF GAS BEFORE RETURN & F.I.T.	RETURN AT 6% ON NET PLANT	FED. INCOME TAX OF RETURN	RETURN AT 6% ON O.D.D.	FED. INCOME TAX OF RETURN
1	1961	$ 7 216 600	$ 940 100	$ 2 084 700	$ 10 241 400	$ 786 100	$ 411 600	$ 28 200	$ 14 800
2	1962	7 220 800	940 100	2 084 700	10 245 000	746 300	390 800	134 200	70 300
3	1963	7 282 400	940 100	2 084 700	10 307 200	762 700	399 300	240 100	125 700
4	1964	7 282 400	940 000	2 084 700	10 307 100	715 300	374 500	345 800	181 100
5	1965	7 282 400	940 000	2 084 700	10 307 100	667 900	349 700	451 400	236 400
6	1966	7 282 400	940 000	2 084 700	10 307 100	620 500	324 900	556 900	291 600
7	1967	7 282 400	940 000	2 084 700	10 307 100	573 100	300 100	662 900	347 100
8	1968	7 282 400	940 000	2 084 700	10 307 100	525 700	275 300	768 600	402 400
9	1969	7 282 400	940 000	2 084 700	10 307 100	478 300	250 500	874 200	457 700
10	1970	7 281 500	940 000	2 084 700	10 306 200	430 900	225 700	978 700	513 000
11	1971	7 281 400	940 000	2 084 700	10 306 100	383 500	200 800	1 085 500	568 400
12	1972	7 303 400	940 000	2 084 700	10 328 100	366 200	191 700	1 191 100	623 600
13	1973	7 359 800	940 000	2 084 700	10 384 500	346 600	181 500	1 291 000	676 000
14	1974	6 500 300	830 600	1 841 900	9 172 800	290 700	152 200	1 384 600	725 000
15	1975	3 796 700	691 000	1 532 100	6 020 000	240 300	125 800	1 520 700	796 300
16	1976	3 104 200	599 000	1 328 000	5 031 200	198 400	103 900	1 354 500	709 200
17	1977	2 813 700	518 700	1 150 100	4 482 500	175 600	91 900	1 106 300	579 200
18	1978	2 446 500	427 800	948 700	3 823 000	154 900	81 100	891 300	466 700
19	1979	2 141 400	373 700	828 600	3 343 700	124 100	65 000	714 100	373 900
20	1980	1 836 000	303 700	673 300	2 813 000	106 200	55 600	559 200	292 800
21	1981	1 632 800	256 600	569 000	2 458 400	104 800	54 900	433 400	226 900
22	1982	1 465 800	213 000	472 400	2 151 200	92 600	48 500	327 100	171 300
23	1983	1 075 100	130 600	289 600	1 495 300	76 700	40 100	238 800	125 000
24	1984	816 700	109 500	242 800	1 169 000	59 300	31 000	184 700	96 700
25	1985	698 000	90 700	201 000	989 700	44 700	23 400	139 300	73 000
26	1986	662 400	82 600	183 200	928 200	32 700	17 100	101 800	53 300
27	1987	624 500	74 100	164 400	863 000	21 700	11 400	67 500	35 400
28	1988	393 000	47 000	104 100	544 100	11 800	6 200	36 800	19 300
29	1989	372 600	41 800	92 600	507 000	5 600	2 900	17 400	8 800
30									
31	TOTAL	$ 125 019 600	$ 17 010 700	$ 37 722 900	$ 179 753 200	$ 9 143 200	$ 4 787 400	$ 17 687 100	$ 9 260 900
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Hearing Exhibit X-18 (3822)
DOCKET NOS. G-12446 ET AL
EXHIBIT NO. X-18
Filed with Exrs. Certification dated JUN 29 1964

TEXAS EASTERN TRANSMISSION CORPORATION
COST OF SERVICE STUDY
RAYNE FIELD
CASE 4

(B)	(C)	(D)	(E)	(F)	(G)	(F)	(H)	(I)	(J)	(K)
AS COST OF AS PER HIBIT X-4	ADD: LA. SEVERANCE TAX ON U.I. GAS	ADD: ROYALTY AND OUTSIDE INT. GAS	TOTAL COST OF GAS BEFORE RETURN & F.I.T.	ADD: RETURN AT 6% ON NET PLANT	ADD: FED. INCOME TAX RE RETURN	ADD: RETURN AT 6% ON O.D.D.	ADD: FED. INCOME TAX RE RETURN	TOTAL COST OF SERVICE	COST OF SERVICE PER MCF @ 14.73 #	COST OF SERVICE PER MCF @ 15.025 #
7 216 600	940 100	2 084 700	10 241 400	786 100	411 600	28 200	14 800	11 482 100	22.47¢	22.92
7 220 200	940 100	2 084 700	10 245 000	746 300	390 800	134 200	70 300	11 586 600	22.67	23.12
7 282 400	940 100	2 084 700	10 307 200	762 700	399 300	240 100	125 700	11 835 000	23.16	23.62
7 282 400	940 000	2 084 700	10 307 100	715 300	374 500	345 800	181 100	11 923 800	23.33	23.80
7 282 400	940 000	2 084 700	10 307 100	667 900	349 700	451 400	236 400	12 012 500	23.51	23.98
7 282 400	940 000	2 084 700	10 307 100	620 500	324 900	556 900	291 600	12 101 000	23.68	24.15
7 282 400	940 000	2 084 700	10 307 100	573 100	300 100	662 900	347 100	12 190 300	23.86	24.34
7 282 400	940 000	2 084 700	10 307 100	525 700	275 300	768 600	402 400	12 279 100	24.03	24.51
7 282 400	940 000	2 084 700	10 307 100	478 300	250 500	874 200	457 700	12 367 800	24.20	24.68
7 281 500	940 000	2 084 700	10 306 200	430 900	225 700	979 700	513 000	12 455 500	24.37	24.86
7 287 400	940 000	2 084 700	10 306 100	383 500	200 800	1 085 500	568 400	12 544 300	24.55	25.04
7 303 400	940 000	2 084 700	10 328 100	366 200	191 700	1 191 100	623 600	12 700 700	24.85	25.35
7 359 800	940 000	2 084 700	10 384 500	346 600	181 500	1 291 000	676 000	12 879 600	25.20	25.70
6 500 300	830 600	1 841 900	9 172 800	290 700	152 200	1 384 600	725 000	11 725 300	25.97	26.49
3 796 900	691 000	1 532 100	6 020 000	240 300	125 800	1 520 700	796 300	8 703 100	23.17	23.63
3 104 200	599 000	1 328 000	5 031 200	198 400	103 900	1 354 500	709 200	7 397 200	22.72	23.18
2 863 700	518 700	1 150 100	4 482 500	175 600	91 900	1 106 300	579 200	6 435 500	22.83	23.29
2 446 500	427 800	948 700	3 823 000	154 900	81 100	891 300	466 700	5 417 000	23.29	23.76
2 141 400	373 700	828 600	3 343 700	124 100	65 000	714 100	373 900	4 620 800	22.75	23.21
1 836 000	303 700	673 300	2 813 000	106 200	55 600	559 200	292 800	3 826 800	23.19	23.65
1 632 800	256 600	569 000	2 458 400	104 800	54 900	433 400	226 900	3 278 400	23.50	23.97
1 465 800	213 000	472 400	2 151 200	92 600	48 500	327 100	171 300	2 790 700	24.10	24.58
1 075 100	130 600	289 600	1 495 300	76 700	40 100	238 800	125 000	1 975 900	27.84	28.40
816 700	109 500	242 800	1 169 000	59 300	31 000	184 700	96 700	1 540 700	25.89	26.41
698 000	90 700	201 000	989 700	44 700	23 400	139 300	73 000	1 270 100	25.77	26.29
662 400	82 600	183 200	928 200	32 700	17 100	101 800	53 300	1 133 100	25.24	25.75
624 500	74 100	164 400	863 000	21 700	11 400	67 500	35 400	999 000	24.80	25.30
393 000	47 000	104 100	544 100	11 800	6 200	36 800	19 300	618 200	24.20	24.68
372 600	41 800	92 600	507 000	5 600	2 900	17 400	8 800	541 700	23.83	24.31
5 019 600	$17 010 700	$37 722 900	$179 753 200	$9 143 200	$4 787 400	$17 687 100	$9 260 900	$220 631 800	23.86¢	24.34¢



3823

Hearing Ex. No. X-19

MANAGEMENT AGREEMENT
RAYNE FIELD, ACADIA PARISH, LOUISIANA

BETWEEN
CONTINENTL OIL COMPANY
AND
LOUISIANA GAS CORPORATION

Dated July 27, 1959

3824

MANAGEMENT AGREEMENT

This Management Agreement made and entered into by and between CONTINENTAL OIL COMPANY, a Delaware corporation, herein called "Continental", and LOUISIANA GAS CORPORATION, a Delaware corporation, herein called "Louisiana Gas",

WITNESSETH:

WHEREAS, by Assignment and Conveyance, Sun Oil Company, a New Jersey corporation, M. H. Marr, General Crude Oil Company, a Delaware corporation, and Continental Oil Comapny, a Delaware corporation, herein called "Sun et al", assigned and conveyed certain leasehold interests to Louisiana Gas Corporation, a Delaware corporation, a copy of the Assignment and Conveyance being annexed hereto as Exhibit "1" and made a part hereof for full particulars as to the leasehold interests conveyed, the terms, provisions and limitations thereof; and

WHEREAS, Continental is a corporation engaged primarily in the business of exploring for and producing oil and gas;

and its experience and capabilites in connection with the operation of producing properties are recognized by Louisiana Gas; and in particular, Continental, as Operator for Sun et al, has heretofore drilled and operated high-pressure gas wells completed in the particular leasehold interests covered by the Assignment and Conveyance and has thus supervised the development of the same and is throughly familiar with the engineering and operating problems relating thereto; and

WHEREAS, Continental has the personnel and facilities necessary to operate such properties safely and efficiently during the term of this agreement and is willing to operate same as the managing agent of Louisiana Gas; and

WHEREAS, Louisiana Gas has had no expeience in operating gas properties in the Rayne Field or in the vicinity thereof, and due to extremely high pressure in the reservoirs and the hazards encounted by an inexperienced Operator, Louisiana Gas has acquired such leasehold interests from Sun et al with the inderstanding that it could obtain the experienced and capable management of such properties by Continental:

NOW THEREFORE, in consideration of the premises Continental and Louisiana Gas agree as follows:

1. AUTHORITIES AND DUTIES OF CONTINENTAL

In connection with the leasehold interests covered by the Assignment and Conveyance, annexed hereto as Exhibit "1", (said leasehold interests, insofar as assigned to Louisiana Gas, herein called "management area") Continental, as managing agent of Louisiana Gas and as the duly appointed and authorized representative of Louisiana Gas, shall perform, and agrees with Louisiana Gas that for the term of this agreement it will perform, as follows:

(a) Continental shall drill, develop, produce, rework, complete, recomplete, abandon, operate, maintain and manage all wells and well equipment, including secondary recovery and recycling equipment, now or hereafter located on the management area, as a prudent operator; provided, however, that no well shall be drilled, nor shall any existing well be deepened below the casing previously set therein without the consent of Louisiana Gas. Continental agrees to drill any well, (or to deepen

any well below the casing previously set therein) upon the request of Louisiana Gas, providing that necessary permits can be obtained for such requested drilling or deepening and completion. The well location, projected depth and interval of completion on any drilling or deepening so requested by Louisiana Gas shall be specified by Louisiana Gas. Continental will furnish all labor, material and services required in the performance of its obligations under this agreement, it being understood that all wells drilled and equipment installed hereunder shall be and remain the property of Louisiana Gas.

(b) Except for the payment of royalties, overriding royalties, production payments and other burdens on production in connection with the management area, Continental (subject to the other provisions of this agreement) shall perform all duties and obligations, insofar as applicable to the management area, imposed or arising by virtue of the leases and other documents described in Exhibit "1" hereto attached, and other instruments now in existence affecting the management area, including all express and implied obligations thereunder.

(c) Insofar as legally permissible, Continental (subject to the other provisions of this agreement) shall perform all duties now or hereafter imposed upon Louisiana Gas as owner and operator of the management area by state law or by the regulations and orders of the Commissioner of Conservation of the State of Louisiana, or of any other Louisiana governmental agency or official having jurisdiction with respect to the management area and the wells now or hereafter drilled and the well equipment installed or located thereon.

(d) Subject to force majeure and to applicable laws and the regulations and orders of the Commissioner of Conservation of the State of Louisiana or other Louisiana governmental agency or official having jurisdiction, Continental (subject to the other provisions of this agreement) will do and perform all things which a prudent operator acting in consideration of sound economics and sound engineering practices would do and perform to so develop and operate the management area that, after adequate nominations by producers or purchasers of production, and previous takes of granted gas allowables to prevent reduction of nominated gas allowables because of failure to take, a minimum daily quantity of production equivalent to at least 150,000 MCF of gas at the wellhead during the two years commencing August 1, 1959, at least 191,000 MCF of gas at the wellhead during the period commencing August 1, 1961, through April 1, 1975, and at least 150,000 MCF of gas at the wellhead for the remaining term (a cubic foot of gas being the same as defined in the Assignment and Conveyance) will be available for delivery from the management area. In the discharge of the obligations herein undertaken

Continental shall (1) at its sole discretion determine the rate of production from any particular well that could be produced without injury to the well, pool or reservoir from which it is producing, and nothing herein contained shall be construed to require production at a greater rate; (2) at its sole discretion determine the maximum efficient rate of production from any pool or reservoir in the management area and shall not be required to produce such pool or reservoir at the rate which is in excess of the maximum efficient rate of withdrawal; and (3) never be required to rework a well or to perform any other operations hereunder when, as a prudent operator, it would determine that the produc-

tion from such well or operation would not be sufficient to bring a profit on such well to a lessee holding the oil and gas lease or leases on the tracts or unit on which the well is drilled.

(e) The particular delegation of authorities and duties expressed in this article shall not be construed as exclusive and restrictive, it being the intent of the parties that (subject to the other provisions of this agreement) Continental shall have the authority and duty to do and perform in its name as the managing agent, or in the name of Louisiana Gas, as the authorized representative of Louisiana Gas, all of the drilling, development and well control procedures that a prudent operator would exercise in developing the management area and bringing the production therefrom to the surface. Gathering, handling, separating, treating and storing of the production, the sale thereof and payment therefor shall not be included in this delegation of authority, such oper-

ating rights and duties to be performed by Louisiana Gas, its successors and assigns.

(f) Continental shall carry and pay for the following insurance coverages

(1) Workmen's compensation and employer's liability insurance in accordance with the laws of the State of Louisiana.

(2) Comprehensive general public liability insurance with bodily injury limits of not less than $25,000 any one person and $50,000 any one accident and with property damage limits of not less than $10,000 any one accident and $50,000 aggregate.

(3) Comprehensive automobile liability insurance with bodily injury limits of not less than $25,000 any one person and $50,000 any one accident and with a property damage limit of not less than $5,000 any one accident.

(4) Excess liability insurance of not less than $500,000 for any one occurrence to apply above the basic limits of items (2) and (3) above.

(5) Fire and extended coverage insurance to cover lease surface equipment in suitable amounts to be determined by Continental.

(g) Continental shall require all drilling contractors engaged in operations on or in connection with the management area to carry and pay for the following insurance coverages:

(1) Workmen's compensation and employer's liability insurance in accordance with the laws of the State of Louisiana.

(2) General public liability insurance with bodily injury limits of not less than $100,000 any one person and $300,000 any one accident and with a property damage limit of not less than $50,000 any one accident, aggregate $100,000.

(3) Automobile public liability insurance with bodily injury limits of not less than $100,000 any one person and $300,000 any one accident and with a property damage limit of not less than $10,000.

(4) Contractual liability insurance with bodily injury limits of not less than $100,000 any one person and $300,000 any one accident and with a property damage limit of not less than $50,000 any one accident, aggregate $100,000.

3827

2. RESPONSIBILITY FOR EXPENDITURES

Continental shall pay all costs of drilling, developing and operating the management area during the term of this agreement, and pay all other costs and expenses of every kind and nature arising from, or based on, the discharge of its duties under Article 1, as well as taxes (except state, federal and other governmental income, excess profits, capital stock, corporate franchise taxes and taxes of a similar nature or equivalent in effect) levied on the ownership of the management area and equipment. It shall pay the expense of any litigation (except the expense of Louisiana Gas, its successors or assigns, in any litigation with Continental) resulting from its operations, or that of its contractors, servants, agents and employees, and shall keep the management area, wells and equipment free and clear of any lien or encumbrance arising from the discharge

of its duties, provided that Continental shall have the right to contest the validity of any claim or demand; but in any event, if all or any portion of the management area, wells or equipment should be seized under any legal process in connection with any such claim or demand, Continental shall cause the property seized to be released, or the seizure stayed within thirty days from the date of seizure or within five days before the date set for the sale of the property whichever is earlier, unless, after notice from Continental, Louisiana Gas advises that its interests will not be adversely affected by the continuance of such seizure. Claims against Louisiana Gas based on the ownership of the management area and operation thereof, insofar as they are within the limits of the operational authority delegated to Continental herein, shall be assumed and paid, or defended, by Continental.

The rights and duties of Continental under Article I are limited in that it has no control over or responsibility for the production from the management area after it reaches the first control point above the surface on each well; consequently the obligations thereafter accruing shall be those of Louisiana Gas, its successors and assigns. By way of illustration and not as all inclusive limitations, Louisiana Gas, its successors and assigns, shall be responsible for and pay all costs and expenses in connection with:

(a) The payment, non-payment or improper payment of any royalty, overriding royalty or production payment due with regard to actual production;

(b) Installation, maintenance, and operation of the gathering, processing and marketing facilities, except that Continental shall provide such well meters as may be required by the Commissioner of Conservation of the State of Louisiana;

(c) Taxes relating to the severance, production, gathering and marketing of the production from the management area; and

(d) Litigation and judgments relating to a claim or demand which Louisiana Gas is obligated to bear under (a), (b) and (c) above.

3. Payment for Services

As payment in full for the performance by Continental of its obligations hereunder, Louisiana Gas agrees to pay Continental at its offices in Houston, Harris County, Texas, on or before the 25th day of each calendar month (beginning with the month of August, 1959), or within fifteen (15) days after receipt of invoice with detailed statement attached, whichever is the later date, a sum equal to all costs and expenses incurred by Continental in connection with performance of its obligations hereunder during the pre-

ceding calendar month (computed in accordance with Exhibit "2" hereto attached, to the extent same does not conflict herewith) plus a management fee of Four Thousand Dollars ($4,000.00) per month. Continental shall not be paid or reimbursed any sums expended by it in defending, settling, or paying any liability that may be incurred under Article 5(h) hereof.

4. Term

This agreement shall be effective as of the 27th day of July, 1959, and shall (except as hereinafter provided) continue in force, and the obligations thereof shall remain in effect, as to each lease respectively for so long as said lease (and any renewal or extension thereof, including new leases

on the mineral interests covered thereby, or a part thereof, or an interest therein) remains in effect; or until the production payment reserved by Sun et al in the Assignment and Conveyance terminates, whichever is earlier; and the rights of Louisiana Gas hereunder may be assigned together with any assignment of the leasehold interests covered by the Assignment and Conveyance, the assignee in such instance taking subject to the provisions hereof.

At the option of Continental, this agreement may be terminated without advance notice,

(a) If Louisiana Gas transfers or assigns any interest in the management area without the prior approval of Continental, or if any successor or assign of Louisiana Gas, or a successive assign, makes a transfer without the prior approval of Continental;

(b) If Louisiana Gas, or a successor, fails to pay Continental any fee and charge, except as to any item on a statement that is the subject of a bona fide dispute, for the service herein undertaken within thirty (30) days after receipt of invoice and statement and the continuance of such failure for a period of fifteen (15) days after written notice of default;

(c) As to any particular tract or lease in the management area when,

(1) as a prudent operator, Continental recommends a release thereof to the extent necessary to satisfy claims and demands of a lessor, in lieu of complying with such claim or demand, and Continental tenders an assignment of its reserved production payment in such tract or lease to Louisiana Gas, or

(2) the production from a lease on the management area is no longer in paying quantities to the lessor and lessee, or

(3) there is drainage of a lease that Louisiana Gas does not elect to protect by drilling an offset well.

At the option of Louisiana Gas, this agreement may be terminated as to any particular tract or lease in the management area when Louisiana Gas (i) tenders to Sun et al, for concurrence, a release thereof; or (ii) joins Sun et al, in a release thereof; or (iii) accepts an assignment from Sun et al of their reserved rights in such tract or lease; or (iv) tenders a reassignment of its interest therein to Sun et al. The events giving rise to the right of Louisiana Gas to terminate as to a particular tract or lease as provided above

shall not be considered a transfer or assignment requiring the prior approval of Continental under subparagraph (a) of this Article 4.

5. GENERAL

(a). No secondary recovery program or recycling operation shall be employed or commenced by Continental which would have the effect of diminishing the production available for delivery from the management area below the volume of gas per day at the wellhead (as set out in subparagraph [d] of Article 1 hereof) unless such secondary recovery program or recycling operation is required by order, rule or regulation of the Commissioner of Conservation of the State of Louisiana or other State of Louisiana regulatory official or body having jurisdiction, or such

secondary recovery or recycling operation is given the prior written approval of Louisiana Gas.

(b) Each party agrees promptly to furnish the other with copies of all claims and demands and of all notices and citations in suits and proceedings which are received by it and relate to the management area and the respective responsibilities of the parties under this agreement. Each party further agrees to keep the other fully advised currently of all developments in connection with the foregoing, and to consult freely with the other relating thereto and to cooperate fully in the defense of the same.

(c) In the event a claim, demand or action is presented to either party that encompasses within its allegations and scope claimed default in obligations undertaken by Continental pursuant to this agreement and obligations relating to the gathering, handling, processing, treating, storing of production, or payment to the owners thereof which is the obligation of Louisiana Gas, the parties shall agree on a mutually satisfactory counsel and other representatives to properly defend the claim and the cost of such counsel and other representatives shall be shared equally. In the event of adverse judgment the burden of the judgment shall be that of the party who has the burden under the terms of this agreement.

(d) This agreement is intended to vest in Continental the authority to file, in the name of Continental, or Louisiana Gas, all notices, applications, logs, requests, documents or similar reports and forms required by state law, rule, regulation or order in connection with the duties undertaken including the rendition of lease and related equipment now located or hereafter placed by Continental on the management area for ad valorem taxes. Filings and reports made by Continental, even though in the name of Continental, and regardless of the capacity shown, shall

be reports by and of Louisiana Gas. Should rules or regulations require that reports be made in the name of the owner and/or operator of the lease, any employee of Continental who would be authorized to make such report in the name of Continental in the course of its normal business in operating its properties is expressly authorized to make such report as the employee of and in the name of Louisiana Gas.

(e) Hearings before the Commissioner of Conservation for the State of Louisiana regarding the unitization of the management area and the drilling and development thereof shall be conducted by Continental if requested by Continental and by Louisiana Gas if requested by Louisiana Gas. Nominations for production shall be made by Louisiana Gas or the purchaser of the gas and any hearings regarding gathering, processing, and handling of such production shall be conducted by Louisiana Gas. Each party shall give the other advance notice of any proposed application for a hearing relating to the

management area or the production therefrom, and will exert all reasonable effort to secure approval of the other party as to the application and evidence to be presented to support the proposal. In the event the parties cannot mutually agree, the party initially proposing the application shall proceed with same and the other party shall have the right to appear at such hearing and present any evidence it deems necessary and advisable.

(f) At least ten (10) days prior to the date nominations for production are filed by Louisiana Gas or the purchaser of the gas, notice of the proposed nomination for that part of the Rayne Field within the management area shall be given to Continental. In the event Continental does not believe the management area (produced as provided under

subparagraph [d] of Article 1 hereof) will be capable of producing at a rate sufficient to deliver the proposed nominated quantities, it will advise Louisiana Gas or the purchaser, within five (5) days after receipt of the notice, of the estimated deliverable gas; and if Continental does not reply to such notice, it shall be deemed that, in the opinion of Continental, the proposed nominated quantities can be so produced. Louisiana Gas or the purchaser shall notify Continental from time to time of the rate at which it elects to take production from the management area.

(g) Force majeure is defined to mean acts of God, inability to obtain material and equipment, strikes, riots, war and other causes (except financial) beyond the control of any of the parties hereto, and neither of the parties shall be liable to the other party for failure to perform or for delay in the performance of any of the terms or provisions hereof, if such failure to pay or delay is the result of force majeure. The party prevented from performing its obligations hereunder by reason of force majeure shall give the other party prompt notice of the force majeure and prompt notice when the force majeure is removed.

(h) If not otherwise limited and restricted herein, the liability and responsibility hereunder of Continental, its employees, agents, servants and assigns, to Louisiana Gas is expressly limited and restricted to and shall be the following:

(1) Liability of Louisiana Gas as Lessee to Lessors and royalty owners and liability of Louisiana Gas to overriding royalty owners and production payment owners;

(2) Liability of Louisiana Gas as Grantee under the assignment and Conveyance by Sun et al, annexed hereto as Exhibit "1";

(3) Liability for personal injury and property damage;

(4) The $12,420,500.00 cash consideration paid by Louisiana Gas for the Assignment and Conveyance, to the extent that the breach of Continental's obligations herein undertaken causes the volume of gas (after removal of condensate) capable of being economically produced from the management area to be less than 783,499,000,000 cubic feet of gas attributable to the net working interest acquired by Louisiana Gas under the Assignment and Conveyance from Sun et al; and the measure of damages in this event will be the volumes of gas lost valued at 20.7¢ per MCF, or the amount of the cash consideration paid by Louisiana Gas to Sun et al for the Assignment and Conveyance, whichever is the lesser;

(5) Losses incurred by Louisiana Gas by reason of the failure of Continental to release or stay a seizure as required under Article 2 hereof.

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The entry of final judgment, discharge or settlement of a liability of Louisiana Gas under (1), (2) or (3) above shall be determinative of Continental's liability to pay same in full, together with its expense of litigation and settlement relating thereto, provided that Continental has been afforded notice and opportunity to defend same. In addition to the foregoing, Louisiana Gas shall have the right to enforce specific performance of the obligations of Continental hereunder.

(i) Under no circumstances shall Continental, is employees, servants or agents, be or become "employees" of Louisiana Gas, its successors or assigns.

(j) All notices, reports, and other communications required hereunder shall be deemed to have been properly given or delivered when delivered personally or when de-

livered by registered or certified mail, with all postage and charges fully prepaid, addressed to the parties hereto respectively as follows:

Continental Oil Company
Attention: Mr. O. L. Fisher
P. O. Box 2197
Houston 1, Texas

Louisiana Gas Corporation
Attention: Mr. Campbell A. Griffin
11th Floor—Esperson Building
Houston 2, Texas

Each party hereto shall have the right to change its address for all purposes by notifying the other party in writing.

IN TESTIMONY WHEREOF this instrument is executed in multiple originals, this 27th day of July, 1959.

WITNESSES:

Buford Koehler
Edith Needham

CONTINENTAL OIL COMPANY
By O. L. FISHER
Vice President

C. R. Ebersole
Ann Vinson

LOUISIANA GAS CORPORATION
By CAMPBELL A. GRIFFIN
President

The State of Texas
County of Harris

On this 27th day of July, 1959, before me, a Notary Public, appeared O. L. Fisher, to me personally known,

who being by me duly sworn, did say that he is Vice President of Continental Oil Company, a corporation, and that the foregoing instrument was signed on behalf of the said corporation by authority of its Board of Directors, and the said O. L. Fisher acknowledged said instrument to be the free act and deed of said corporation.

Witness my official signature and seal as such Notary Public on the day, month and year first above written.

HELEN P. WATERMAN
Helen P. Waterman
Notary Public in and for
Harris County, Texas

[Notarial Seal]

The State of Texas
County of Harris

On this 27th day of July, 1959, before me, a Notary Public, personally appeared Campbell A. Griffin, to me personally known, who being by me duly sworn, did say that he is President of Louisiana Gas Corporation, a corporation, and that the foregoing instrument was signed on beahlf of said corporation by authority of its Board of Directors, and the said Campbell A. Griffin acknowledged said instrument to be the free act and deed of said corporation.

Witness my official signature and seal as such Notary Public on the day, month and year first above written.

SARAH C. BYRNE
Sarah C. Byrne
Notary Public in and for
Harris County, Texas

[Notarial Seal]

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Exhibit 1

Assignment and Conveyance

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EXHIBIT "2"

Attached to and made a part of Management Agreement between Continental Oil Company and Louisiana Gas Corporation dated July 27, 1959.

ACCOUNTING PROCEDURE

I. General Provisions

1. *Payments*

Louisiana Gas Corporation shall pay all bills on or before the 25th day of the calendar month during which they are received or within fifteen (15) days after receipt thereof, whichever is the later date. If payment is not made within such time, the unpaid balance shall bear interest at the rate of six per cent (6%) per annum until paid.

2. *Audits*

Payment of any bills shall not prejudice the right of Louisiana Gas Corporation, or its representatives, to protest or question the correctness thereof. All statements rendered to Louisiana Gas Corporation, or its representatives, by Continental Oil Company during any calendar year shall be conclusively presumed to be true and correct after twenty-four months following the close of any such calendar year, unless within said twenty-four months' period Louisiana Gas Corporation, or its representatives, takes written exception thereto and makes claim on Continental Oil Company for adjustment. Failure on the part of Louisiana Gas Corporation or its representatives to

make claim on Continental Oil Company for adjustment within such period shall establish the correctness thereof and preclude the filing of exceptions thereto or the making of claims for adjustment thereon. Louisiana Gas Corporation, or its representatives, shall have the right to audit Continental Oil Company's accounts and records relating to the accounting hereunder at any time, but in any event within twenty-four months next following the close of any calendar year. Louisiana Gas, or its representatives, shall have six months next following the examination of Continental's records within which to take written exception to and make any and all claims on Continental. The provisions of this paragraph shall not prevent adjustments resulting from physical inventory of property as provided in Section VI, Inventories, hereof.

II. Development and Operating Charges

Subject to limitations hereinafter prescribed, Continental shall charge Louisiana Gas with the following:

1. *Labor*

A. Salaries and wages of Continental's employees directly engaged on the mangament area in the development, maintenance, and operation thereof, including salaries or wages paid to geologists and other employees who are temporarily assigned to and directly employed on the management area.

B. Continental's cost of holiday, vacation, sickness and disability benefits, and other customary allowances applicable to the salaries and wages chargeable under Subparagraph 1 A and Paragraph 10 of this Section II. Costs under this Subpara-

graph 1 B may be charged on a "when and as paid basis" or by "percentage assessment" on the amount of salaries

and wages chargeable under Subparagraph 1 A and Paragraph 10 of this Section II. If percentage assessment is used, the rate shall be based on Continental's cost experience.

C. Costs of expenditures or contributions made pursuant to assessments imposed by governmental authority which are applicable to Continental's labor cost of salaries and wages as provided under Subparagraphs 1 A, 1 B, and Paragraph 10 of this Section II.

2. *Employee Benefits*

Continental's current cost of established plans for employees' group life insurance, hospitalization, pension, retirement, stock purchase, thrift, bonus, and other benefit plans of a like nature, applicable to Continental's labor cost, provided that the total of such charges shall not exceed ten per cent (10%) of Continental's labor costs as provided in Subparagraphs A and B of Paragraph 1 of this Section II and in Paragraph 10 of this Section II.

3. *Material*

Material, equipment, and supplies purchased by Continental, for use on the management area. So far as it is reasonably practical and consistent with efficient and economical operation, only such material shall be purchased for or transferred to the management area as required for immediate use, and the accumulation of surplus stocks shall be avoided.

4. *Transportation*

Transportation of employees, equipment, material, and supplies necessary for the development, maintenance, and operation of the management area subject to the following limitations:

A. If material is moved to the management area from vendor's or from Continental's warehouse or other properties, no charge shall be made to the management area for a distance greater than the distance from the nearest reliable supply store or railway receiving point where such material is available, except by special agreement with Louisiana Gas.

B. If surplus material is moved to Continental's warehouse or other storage point, no charge shall be made to the management area for a distance greater than the distance from the nearest reliable supply store or railway receiving point, except by special agreement with Louisiana Gas. No charge shall be made to the management area for moving material to other properties belonging to Continental, except by special agreement with Louisiana Gas.

5. *Service*

A. Outside Services:

The cost of contract services and utilities procured from outside sources.

B. Use of Continental's Equipment and Facilities:

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Use of and service by Continental's exclusively owned equipment and facilities as provided in Paragraph 4 of Section III entitled "Operator's Exclusively Owned Facilities."

6. *Damages and Losses to Management Area and Equipment*.

All costs or expenses necessary to replace or repair damages or losses incurred by fire, storm, theft, accident, or any other cause not controllable by Continental through the exercise of reasonable diligence. Continental shall fur-

nish Louisiana Gas written notice of damages or losses incurred as soon as practicable after report of the same has been received by Continental.

7. *Litigation Expense*

All costs and expenses of litigation and legal services, including attorneys' fees for outside services and the salaries and expenses of staff attorneys working in connection with the management area and actual expenses incurred in securing evidence where such expenses are incurred by Continental, and necessary in connection with the management service undertaken.

8. *Taxes*

All taxes of every kind and nature paid by Continental in the discharge of the obligations undertaken.

9. *Insurance*

Premiums paid for insurance carried, together with all expenditures incurred and paid in settlement of any and all losses, claims, damages, judgments, and other expenses, including legal services, not recovered from insurance carrier.

10. *District and Camp Expense*

A proportionate share of the salaries and expenses of Continental's District Superintendent and other general district or field employees serving the management area, whose time is not allocated direct to the management area, and a proportionate share of maintaining and operating a district office and all necessary camps, including housing facilities for employees if necessary, in conducting the operations on the management area and other leases and facilities operated by Continental in the same locality. The

expense of, less any revenue from, these facilities shall include depreciation or a fair monthly rental in lieu of depreciation on the investment. Such charges shall be apportioned to all leases and facilities served on some equitable basis consistent with Continental's accounting practice.

II. Administrative Overhead

Continental shall have the right to assess the management area covered hereby the following management and administrative overhead charges, which shall be in lieu of all expenses of all offices of Continental not covered by Section II, Paragraph 10, above, including salaries and expenses of personnel assigned to such offices, except that salaries of geologists and other employees of Continental who are temporarily assigned to and directly serving on the management area will be charged as provided in Section II, Paragraph 1, above. Salaries and expenses of other employees assigned to such offices will be considered as covered by overhead charges in this paragraph.

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A. $500 per month for each drilling well.

B. $75 per month for each producing well.

In connection with overhead charges, the status of wells shall be as follows:

(1) Injection wells for recovery operations, such as for repressure or water flood, shall be included in the overhead schedule the same as producing wells.

(2) Water supply wells utilized for water flooding operations shall be included in the overhead schedule the same as producing wells.

(3) Wells permanently shut down but on which plugging operations are deferred shall be dropped from the

overhead schedule at the time the shutdown is effected. When such wells are plugged, overhead shall be charged at the producing well rate during the time required for the plugging operation.

(4) Wells being plugged back, drilled deeper, or converted to a source or input well shall be included in the overhead schedule the same as drilling wells.

(5) Temporarily shut-down wells (other than by governmental regulatory body) which are not produced or worked upon for a period of a full calendar month shall not be included in the overhead schedule; however, wells shut in by governmental regulatory body shall be included in the overhead schedule only in the event the allowable production is transferred to other wells on the same property. In the event an allowable for the entire management area is established, all wells capable of producing from the management area will be counted in determining the overhead charge.

(6) Wells completed in dual or multiple horizons shall be considered as two wells in the producing overhead charge.

(7) Lease salt water disposal wells shall not be included in the overhead schedule unless such wells are used in a secondary recovery program on the management area.

C. The above overhead schedule for producing wells shall be applied to the total number of wells operated under the Management Agreement to which this accounting procedure is attached, irrespective of individual leases.

12. *Other Expenditures*

Any expenditure, other than expenditures which are covered and dealt with by the foregoing provisions of this Section II, incurred by Continental for the necessary and proper development, maintenance, and operation of the management area.

13. *Continental's Warehouse Expense*

None except clerical labor included in district expense.

III. Basis of Charges to Management Area

1. *Purchases*

Material and equipment purchased and service procured shall be charged at price paid by Continental, after deduction of all discounts actually received.

2. *Material Furnished by Continental*

Material required for operations shall be purchased for direct charge to the management area whenever practicable, except that Continental may furnish such material from Continental's stocks under the following conditions:

A. New Material (Condition "A")

(1) New material transferred from Continental's warehouse or other properties shall be priced f.o.b. the nearest reputable supply store or railway receiving point where such material is available at current replacement cost of the same kind of material. This will include material such as tanks, rigs, pump, sucker rods, boilers and engines. Tubular goods (2" and over) shall be priced on the following basis:

(a) On carload basis effective at date of transfer and f.o.b. railway receiving point nearest the management area, regardless of quantity transferred, if material was originally received in Continental's account at all rail rate.

(b) If tubular goods are received in Continental's storage point by barge and moved to the management area by barge, rail or truck it shall be priced at current mill price at date of transfer plus barge rate and stevedoring and storage costs at storage point and the barge, rail or truck rates to the management area, according to transportation facilities used, regardless of quantity transferred.

(2) Other material shall be priced on basis of a reputable supply company's preferential price list effective at date of transfer and f.o.b. the store or railway receiving point nearest the management area where such material is available.

(3) Cash discount shall not be allowed.

B. Used Material (Condition "B" and "C")

(1) Material which is in sound and serviceable condition and is suitable for reuse without reconditioning shall be classed as Condition "B" and priced at 75% of new price. Tubular goods (2" and over) shall be priced at 75% of current new price at date of transfer on basis of carload mill shipment f.o.b. nearest railway receiving point to the management area.

(2) Material which cannot be classified as Condition "B" but which,

(a) After reconditioning will be further serviceable for original function as good second-hand material (Condition "B"), or

(b) Is serviceable for original function but substantially not suitable for reconditioning, shall be classed as Condition "C" and priced at 50% of new price.

(3) Material which cannot be classified as Condition "B" or Condition "C" shall be priced at a value commensurate with its use.

(4) Tanks, derricks, buildings, and other equipment involving erection costs shall be charged at applicable percentage of knock-down new price.

3. *Warranty of Material Furnished by Continental*

Continental does not warrant the material furnished beyond or back of the dealer's or manufacturer's guaranty; and, in case of defective material, credit shall not be passed until adjustment has been received by Continental from the manufacturers or their agents.

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4. *Continental's Exclusively Owned Facilities*

The following rates shall apply to service rendered to the management area by facilities owned exclusively by Continental:

A. Water service, fuel gas, power, and compressor service: At rates commensurate with cost of providing and furnishing such service to the management area but not exceeding rates currently prevailing in the field where the management area is located.

B. Automotive Equipment: Rates commensurate with cost of ownership and operation. Such rates should gen-

erally be in line with schedule of rates adopted by the Petroleum Motor Transport Association, or some other recognized organization, as recommended uniform charges against the management area operations and revised from time to time. Automotive rates shall include cost of oil, gas, repairs, insurance and other operating expense and depreciation; and charges shall be based on use in actual service on, or in connection with, the management area. Truck, tractor, and pulling unit rates shall include wages and expenses of driver.

C. A fair rate shall be charged for the use of drilling and cleaning out tools and any other items of Continental's fully owned machinery or equipment which shall be ample to cover maintenance, repairs, depreciation, and the service furnished the management area; provided that such charges shall not exceed those currently prevailing in the field where the management area is located.

D. Whenever requested, Continental shall inform Louisiana Gas, or its representative, in advance of the rates it proposes to charge.

E. Rates shall be revised and adjusted from time to time when found to be either excessive or insufficient.

IV. Disposal of Lease Equipment and Material

Continental shall be under no obligation to purchase from Louisiana Gas surplus, new or used equipment, material or supplies. If Continental determines that any such surplus exists, Continental shall, at its option, purchase same at such price and on the same conditions as same can be sold, or sell such surplus. Any sum chargeable to Continental for surplus materials purchased, or any sum received by Continental from the sale of such surplus materials, shall be credited to Louisiana Gas on the next monthly statement.

V. Basis of Pricing Material Transferred From Management Area

Material purchased by Continental, unless otherwise agreed, shall be valued on the following basis:

1. *New Price Defined*

New price as used in the following paragraphs shall have the same meaning and application as that used above in Section III, "Basis of Charges to Management Area."

2. *New Material*

New material (Condition "A"), being new material procured for the management area but never used thereon, at one hundred per cent (100%) of current new price (plus sales tax, if any).

3. *Good Used Material*

Good used material (Condition "B"), being used material in sound and serviceable condition, suitable for reuse without reconditioning.

A. At seventy-five per cent (75%) of current new price.

4. *Other Used Material*

Used material (Condition "C"), at fifty per cent (50%) of current new price, being used material which:

A. After reconditioning will be further serviceable for original function as good secondhand material (Condition "B"), or

B. Is serviceable for original function but substantially not suitable for reconditioning.

5. *Bad Order or Junk Material*

Material and equipment (Condition "D"), which is no longer usable for its original purpose or junk being obsolete and scrap material shall be disposed of prior to removal from the location at which it was used.

6. *Temporarily Used Material*

When the use of material is temporary and its service to the management area does not justify the reduction in price as provided above, such material shall be priced on a basis that will leave a net charge to the management area consistent with the value of the service rendered.

VI. Inventories

1. *Periodic Inventories*

Periodic inventories shall be taken by Continental of the material on the management area which shall include all such material as is ordinarily considered controllable by operators of oil and gas properties.

2. *Notice*

Notice of intention to take inventory shall be given by Continental at least ten (10) days before any inventory is to begin so that Louisiana Gas, or its representatives, may be represented when any inventory is taken.

3. *Failure to be Represented*

Failure of Louisiana Gas, or its representatives, to be represented at the physical inventory shall bind Louisiana Gas to accept the inventory taken by Continental, who shall in that event furnish Louisiana Gas, or its representatives, with a copy thereof.

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4. *Reconciliation of Inventory*

Reconciliation of inventory with charges to the management area shall be made by each party, and a list of overages and shortages shall be jointly determined by Continental and Louisiana Gas, or its representatives.

5. *Adjustment of Inventory*

Inventory adjustment shall be made by Continental for overages and shortages, but Continental shall only be held accountable to Louisiana Gas for shortages due to lack of reasonable diligence.

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CONSENT TO ASSIGN MANAGEMENT AGREEMENT

Continental Oil Company, hereinafter referred to as "Continental" consents to and approves of the assigning by Louisiana Gas Corporation, hereinafter referred to as Louisiana Gas", all of the rights and obligations of Louisiana Gas under the attached Management Agreement between Louisiana Gas and Continental to Texas Eastern Transmission Corporation, hereinafter referred to as "Texas Eastern", with the understanding that:

1. Any assignment of the Management Agreement by Texas Eastern, without the prior approval of Continental, shall give Continental, subject to the remaining provisions of Article 4, the right to cancel under the provisions of subparagraph (a) of Article 4;

2. Texas Eastern shall be responsible for the obligations of the said agreement so long as, but only to the extent that, the obligations accrue during the time the

leasehold rights affected thereby are held by Texas Eastern.

CONTINENTAL OIL COMPANY
By O. L. FISHER
Vice President

LOUISIANA GAS CORPORATION
By CAMPBELL A. GRIFFIN
President

TEXAS EASTERN TRANSMISSION CORPORATION
By JOHN C. JACOBS
Vice President

TEXAS EASTERN TRANSMISSION CORPORATION

DISPOSITION OF PAYNE FIELD GAS PRODUCTION
FROM JULY, 1959 THROUGH AUGUST, 1961

		(1) TOTAL FIELD PRODUCTION MCF	(2) LESS: GAS DELIVERED TO OTHER FIELDS MCF	(3) PLUS: GAS REC'D FROM OTHER SOURCES MCF	(4) LESS: GAS DISPOSED OF IN FIELD MCF	(5) TOTAL TO PLANT MCF	(6) DISPOSITION OF GAS: FUEL FROM DE-ETHANIZER MCF	(7) FUEL FROM DE-METHANIZER MCF	(8) SHRINKAGE MCF	(9) DRILLING FUEL MCF
1959	July	497,970	434,643	1,763	-	-	-	-	-	-
	August	1,469,636	-	1,173	-	-	-	-	-	-
	September	3,692,321	-	2,755	-	-	-	-	-	-
	October	3,731,631	-	1,466	-	-	-	-	-	-
	November	3,524,005	-	1,274	-	-	-	-	-	-
	December	3,700,479	-	1,972	-	-	-	-	-	-
1959	Total	16,624,930	434,643	10,303	-	-	-	-	-	-
1960	January	3,170,005	-	96	-	-	-	-	-	2,640
	February	3,614,742	-	-	-	-	-	-	-	3,906
	March	3,609,300	-	103	4,204	-	-	-	-	5,106
	April	3,003,957	-	391	4,204	-	-	-	-	4,269
	May	3,533,045	-	826	4,204	-	-	-	-	2,168
	Sub-Total	17,019,929	-	1,496	12,352	-	-	-	-	20,257
	June	3,363,429	-	1,303	5,609	3,359,043	2,232	-	6,336	-
	July	3,966,276	-	704	4,301	3,962,599	42,624	-	87,469	23
	August	4,277,717	77,871	1,523	4,733	4,196,636	49,626	-	70,969	2,307
	September	3,937,554	107,176	647	4,602	3,826,343	50,406	-	40,671	-
	October	4,256,702	140,422	1,276	5,314	4,112,242	53,020	-	155,678	-
	November	4,154,924	100,604	83	5,243	4,041,080	53,362	-	87,744	-
	December	4,316,149	101,449	371	5,294	4,409,777	39,944	25,013	36,048	-
	Sub-Total Jan - Dec.	28,472,751	535,602	5,907	35,336	27,907,720	291,344	25,013	495,715	2,330
1960	Total	45,492,680	535,602	7,403	40,100	27,907,720	291,344	25,013	495,715	22,587
1961	January	4,640,088	96,394	-	5,202	4,538,492	26,803	39,092	29,339	-
	February	3,761,685	131,271	-	5,151	3,625,463	19,720	28,973	43,972	-
	March	4,149,346	100,031	-	4,096	4,044,419	32,329	38,319	95,040	549
	April	4,035,774	87,325	-	5,126	3,943,323	30,573	34,493	81,178	38,637
	May	3,112,810	96,500	-	5,253	3,011,057	21,755	45,049	99,276	42,925
	June	3,002,317	86,321	-	5,253	2,910,743	10,747	45,990	70,660	35,469
	July	2,893,650	100,585	-	4,743	2,788,322	14,241	47,085	98,887	29,368
	August	4,465,566	99,242	-	4,743	4,361,581	21,187	48,901	129,703	26,725
1961	Total	30,061,436	797,669	-	40,367	29,223,400	177,363	328,710	648,855	173,673
Total Prior to Plant Oper.		33,644,659	434,643	11,799	12,852	-	-	-	-	20,257
Total After Plant In Oper.		58,534,187	1,333,271	5,907	75,703	57,131,120	468,707	354,523	1,144,570	176,003
Grand Total		92,179,046	1,767,914	17,706	88,555	N.A.	468,707	354,523	1,144,570	196,260

NOTE: Source of Information as Follows:
1. Columns 1, 2, 3 and 4 from Louisiana Dept. of Conservation Form R5P & R6.
2. Columns 5, 6, 7, 8, 9 and 10 from Louisiana Dept. of Conservation Form R6.
3. Columns 12 and 13 from Louisiana Dept. of Conservation Form R1 & R6.

TEXAS EASTERN TRANSMISSION CORPORATION

DISPOSITION OF RAYNE FIELD GAS PRODUCTION
FROM JULY, 1959 THROUGH AUGUST, 1961

Filed with Surs. Certification
dated JUN 29 1962

GAS RD TO FIELD..	(3) PLUS: GAS REC'D FROM OTHER SOURCES MCF	(4) LESS: GAS DISPOSED OF IN FIELD MCF	(5) TOTAL TO PLANT MCF	(6) DISPOSITION OF GAS: FUEL FROM DE-ETHANIZER MCF	(7) FUEL FROM DE-METHANIZER MCF	(8) SHRINKAGE MCF	(9) DRILLING FUEL MCF	(10) HEATER FUEL MCF	(11) DELIVERED TO PIPELINE MCF	(12) CONDENSATE PRODUCTION BBLS	(13) PLANT PRODUCTS BBLS
643	1,763	-	-	-	-	-	-	-	65,098	25,310	-
	1,173	-	-	-	-	-	-	-	1,470,809	70,529	-
	2,755	-	-	-	-	-	-	-	3,695,076	171,711	-
	1,466	-	-	-	-	-	-	1,130	3,731,967	176,625	-
	1,274	-	-	-	-	-	-	2,529	3,523,630	170,820	-
	1,372	-	-	-	-	-	-	3,240	3,707,111	136,708	-
643	10,303	-	-	-	-	-	-	6,899	16,193,691	801,703	-
	96	-	-	-	-	-	2,648	3,200	3,173,365	162,439	-
	-	-	-	-	-	-	5,906	2,044	3,605,912	182,061	-
	103	4,204	-	-	-	-	5,186	3,284	3,596,729	186,956	-
	391	4,204	-	-	-	-	4,269	2,493	3,073,302	162,402	-
—	826	4,204	-	-	-	-	2,168	2,203	3,525,216	184,338	-
	1,496	12,352	-	-	-	-	20,257	14,092	16,974,224	878,198	-
	1,303	5,609	3,359,343	2,232	-	6,836	-	1,323	3,349,152	172,061	9,724
	704	4,301	3,962,599	42,624	-	97,469	23	-	3,822,483	188,900	81,531
871	1,523	4,733	4,196,636	49,626	-	70,369	2,307	-	4,073,734	203,234	91,600
176	647	4,632	3,326,343	50,436	-	40,671	-	603	3,734,583	184,087	94,438
422	1,276	5,314	4,112,242	53,020	-	155,678	-	414	3,903,130	197,260	103,916
604	83	5,243	4,041,080	53,362	-	87,744	-	538	3,899,436	188,906	96,956
449	371	5,294	4,409,777	39,994	25,813	36,840	-	606	4,306,516	206,879	113,913
602	5,907	35,336	27,907,720	291,344	25,813	495,715	2,330	3,484	27,069,034	1,343,335	592,078
602	7,403	40,188	27,907,720	291,344	25,813	495,715	22,587	17,576	44,063,258	2,221,533	592,078
394	-	5,232	4,536,492	26,803	39,092	29,339	-	587	4,441,871	214,245	123,273
271	-	5,151	3,625,463	19,720	28,973	43,972	-	504	3,532,286	170,591	78,840
331	-	4,096	4,044,419	32,329	38,319	95,840	549	541	3,876,841	193,374	120,041
325	-	5,126	3,343,323	30,573	34,493	81,178	38,637	267	3,750,175	185,930	110,095
500	-	5,253	3,011,057	21,755	45,049	99,276	42,925	335	2,801,719	132,094	89,234
321	-	5,253	2,910,743	10,747	45,990	70,660	35,469	327	2,747,542	133,685	81,324
585	-	4,743	2,760,322	14,241	47,085	93,887	29,368	334	2,598,407	126,530	84,344
242	-	4,743	4,361,581	21,187	40,901	129,703	26,725	358	4,134,707	199,556	123,406
569	-	40,367	29,223,400	177,363	320,710	640,855	173,673	3,251	27,891,548	1,356,005	810,557
543	11,799	12,852	-	-	-	-	20,257	20,991	33,167,915	1,679,901	-
271	5,907	75,703	57,131,120	468,707	354,523	1,144,570	176,003	6,735	54,900,582	2,701,340	1,402,635
814	17,706	88,555	N.A.	468,707	354,523	1,144,570	196,260	27,726	88,148,497	4,381,242	1,402,635

of Conservation Form R5P & R6.
a Dept. of Conservation Form R6.
Conservation Form R1 & R6.

3844

Hearing Exhibit No. X-21

TEXAS EASTERN TRANSMISSION CORPORATION
RAYNE FIELD

HISTORY OF WELL DESIGNATIONS

New Names

Effective October 1, 1961

1.	KLMP	A	SU	A-E		Quebodeaux No. 1
2.	KLMP	D	SU	A-W		Petitjean Co. No. 1[9]
3.	KLMP	D	SU	B-ED		Arceneaux No. 2
4.	KLMP	D	SU	C-E		Arceneaux No. 1
5.	KLMP	D	SU	D-W		Petitjean Co. No. 4-D
6.	HMSK	D2	SU	A-M		G. Navarre A No. 1
7.	HMSK	D2	SU	B-J		W. Arceneaux No. 1
8.	HMSK	E	SU	A-J		S. Arceneaux No. 1
9.	HMSK	E	SU	B-D		Cormier No. 1
10.	HMSK	E	SU	C-T		G. Petitjean No. 2
11.	HMSK	E	SU	D-W		Petitjean Co. No. 3
12.	HMSK	E	SU	E-A		Meche No. 1
13.	HMSK	E	RA	SU	A-E	Arceneaux No. 1
14.						Marie Petitjean No. 1 XX[8]
15.	NOD	A	SU	A-W		Petitjean Co. No. 2
16.	NOD	A	SU	B-T		G. Petitjean No. 1
17.	NOD	A	SU	C-G		Mouton No. 1
18.	NOD	A	SU	D-A		R. Blanchard No. 1
19.	NOD	A	SU	E-D		Cormier No. 2
20.	NOD	A	SU	F-E		Dupuis No. 1
21.	NOD	A	SU	G-C		Dugas No. 1
22.	NOD	A	SU	H-L		Cormier No. 1
23.	NOD	A	SU	I-R		E. Babineaux No. 1

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SUPREME COURT, U. S.

VOLUME III

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 644

THE UNITED GAS IMPROVEMENT COMPANY, PETITIONER,

vs.

CONTINENTAL OIL COMPANY, ET AL.

No. 693

FEDERAL POWER COMMISSION, PETITIONER,

vs.

M. H. MARR, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NO. 644 PETITION FOR CERTIORARI FILED NOVEMBER 2, 1964

NO. 693 PETITION FOR CERTIORARI FILED NOVEMBER 16, 1964

CERTIORARI GRANTED JANUARY 18, 1965

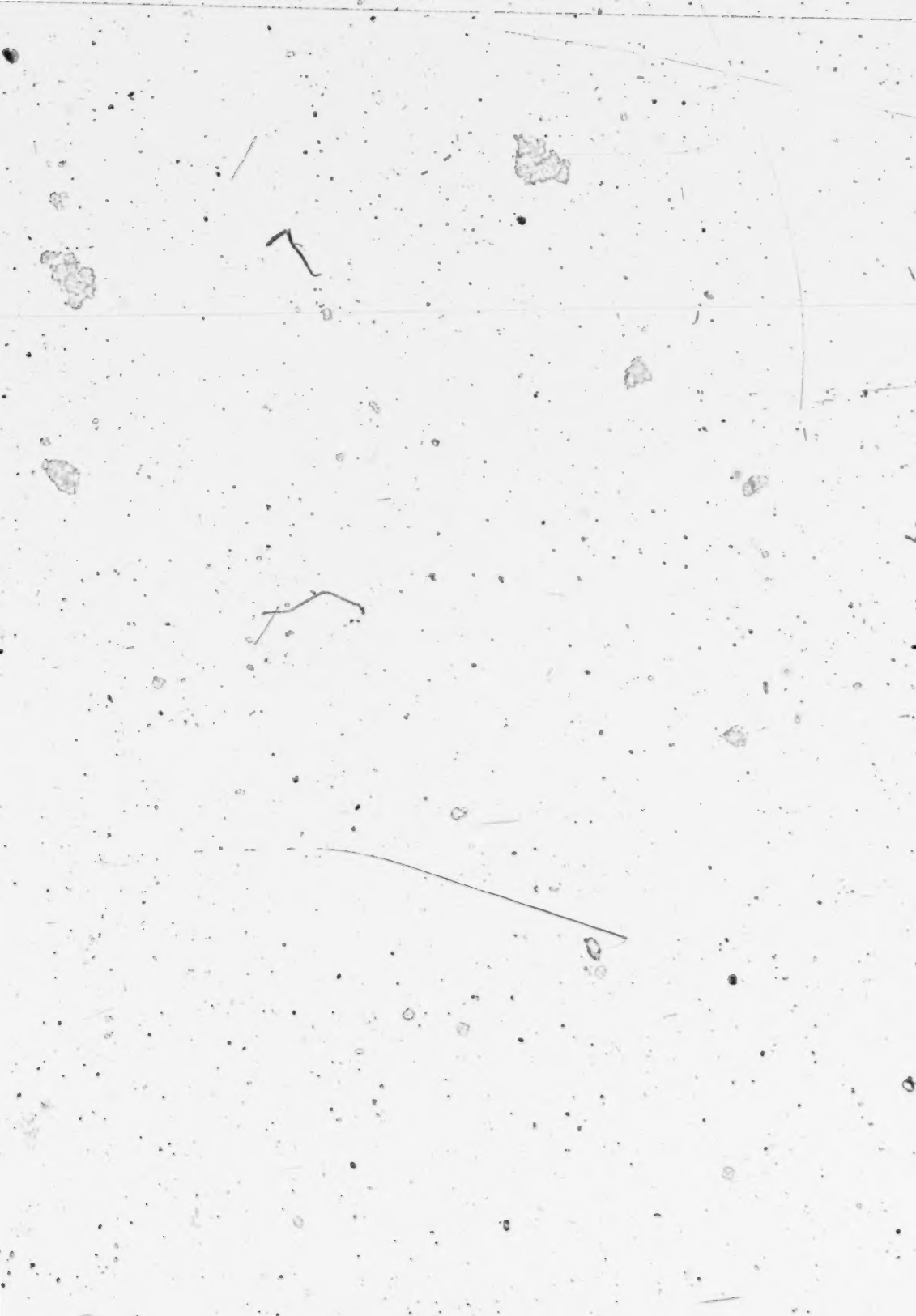


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IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

Nos. 20560, 20564, 20582, 20587, 20829, 20846, 20847, and 20591

M. H. MARR, SUN OIL COMPANY, CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION, *Petitioners,*

v.

FEDERAL POWER COMMISSION, *Respondent.*

On Petitions to Review Opinions and Orders of the Federal Power Commission

---

JOINT APPENDIX

(Volume III)

(4038)

4038

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

(Filed Dec 8, 1960)

No. 15,412

Public Service Commission of the State of New York,
Petitioner

v.

Federal Power Commission, Respondent

Texas Eastern Transmission Corporation, Intervenor

On Petition to Review an Order of the
Federal Power Commission

Decided December 8, 1960

Mr. Kent H. Bowrn, with whom *Mr. George H. Kenny* was on the brief, for petitioner.

Mr. David J. Bardin, Attorney, Federal Power Commission, with whom *Messrs. Willard W. Gatchell,* General Counsel, Federal Power Commission at the time the brief was filed, *Howard E. Wahrenbrock,* Solicitor, Federal Power Commission, and *Robert L. Russell,* Assistant General Counsel, Federal Power Commission, were on the brief, for respondent. *Mr. John C. Mason,* General Counsel, Federal Power Commission, also entered an appearance for respondent.

Mr. William D. Deakins, Jr., of the bar of the Supreme Court of Texas, *pro hac vice,* by special leave of the

Court, with whom *Mr. Martin L. Friedman* was on the brief, for intervenor.

Before Edgerton, Washington and Bastian, Circuit Judges.

Washington, *Circuit Judge:* This is a natural gas case. It arises upon petition to review an order of the Federal Power Commission granting to Texas Eastern Transmission Corporation, a pipeline company, an unconditional certificate of public convenience and necessity to expand its pipeline facilities, under Section 7 of the Natural Gas Act.[1]

On February 1, 1957, Texas Eastern executed gas purchase contracts with four producer-sellers of natural gas in the Rayne Field area of southern Louisiana. These contracts called for initial prices of 23.9 cents per Mcf, including reimbursement of state taxes in the amount of 1.3 cents. Shortly thereafter, Texas Eastern filed an application for a certificate of public convenience and necessity to construct a connecting line to Rayne Field, and the four producer-sellers filed applications for certification of the sales of gas to Texas Eastern. Hearings were held, and the Examiner entered an order recommending unconditional certification of the proposals.

While the matter was pending before the Commission on exceptions to the Examiner's decision, the Court of Appeals for the Third Circuit reversed an order of the Commission in another case granting unconditional certification of sales of natural gas from the offshore Louisiana fields by independent producers at an initial price of 22.4 cents per Mcf, including tax. *Public Service Commission of New York* v. *Federal Power Commission*, 257 F.2d 717 (3d Cir. 1958).[2] Thereafter, as a consequence of

---

[1] 52 Stat. 824 (1938), as amended, 15 U.S.C. § 717f (1958).

[2] *Affirmed sub nom.* Atlantic Refining Co. v. Public Service Commission, 360 U.S. 378 (1959), commonly called the "Catco" case.

negotiations between Texas Eastern and the Rayne Field producers-sellers, three of the latter filed notice of the termination of their gas sale contracts and of withdrawal of their certificate applications.[3] Texas Eastern thereupon filed a motion to reopen the hearing and amend its original certificate application to modify the design of certain facilities, and to reflect a major change in the plan for acquiring the Rayne Field gas. Instead of purchasing gas in the usual manner from the four producer-sellers, Texas Eastern proposed to acquire leasehold interests in the reserves formerly committed to the contracts, for a total price of some $134,395,700.00.

The significance of this change in the form of the transaction, at least from the standpoint of the producer-sellers, is manifest. Sales of natural gas by an independent producer are subject to Commission regulation under Sections 4 and 5 of the Natural Gas Act. *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954). But the Commission has been held to lack jurisdiction over gas leases. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949). The Commission urges that because the acquisitions, in their revised form, are "non-jurisdictional," it is under no obligation to determine whether the price to be paid by Texas Eastern for the gas is consonant with the public interest as a prerequisite to certification of the pipeline construction project which relies upon these leases. A like position is taken by Texas Eastern, which has intervened.

It was entirely within the Commission's power to certify the pipeline construction program without passing upon

[3] The fourth producer-seller did not file its notice of withdrawal until sometime later.

the financial merits of the gas acquisition arrangement.[4] But the language and the tenor of the Commis-

sion's Opinion and Order appear to confer general approval upon the terms of the acquisition arrangement. Insofar as the Order purports to pass favorably upon the pricing aspects of the gas lease acquisitions, it is unsupported by substantial evidence in the record, and cannot stand.

While the Act does not require a determination that proposed rates will be just and reasonable in a Section 7 certification proceeding, the fact that prices of natural gas "have leaped from one plateau to the higher levels of another, as is indicated here, does make price a consideration of prime importance." *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378, 391 (1959) ("Catco"). We read that decision as holding that where a natural gas company seeks an unconditional certificate to make new sales of natural gas at proposed prices which are "out of line" with exsiting prices, or which will tend to have an inflationary impact on the natural gas market, it is under an obligation to demonstrate upon the record the reasons why such increased prices are justified by the "public convenience and necessity." The Commission may not act merely upon proof that the prices in question were arrived at as a result of arm's-length negotiation, but must look behind the negotiated price. Nor can it abdicate its responsibilities simply because the parties ettll it that the whole transaction will collapse unless the full price asked is approved.

Under the proposed "lease purchase" arrangement, petitioner claims that the total cost to Texas Eastern for each Mcf of Rayne Field gas will be 22.89 cents, including Lou-

[4] This procedure was followed in Kansas Pipe Line and Gas Co., et al., Doc. G-106, et al., 2 F.P.C. 29, 45 (1939).

isiana tax of 2.3 cents. The Commission questions some aspects of the petitioner's calculations. The difficulty of comparing an ordinary gas purchase with what is here proposed is manifest. But in any event we think it clear that the price is high enough to be in the disputed area to which the *Catco* rule applies. While it is true that in subsequent rate proceedings instituted

under Section 5 the Commission might properly inquire behind the negotiated acquisition costs, *City of Detroit* v. *Federal Power Commission*, 97 U.S.App.D.C. 260, 230 F.2d 810 (1955), cert. denied, 352 U.S. 829 (1956), the "nigh interminable" delay associated with such proceedings makes it essential that any proposal under Section 7 be subjected to a most careful scrutiny *Atlantic Refining Co.* v. *Public Service Commission, supra.* As the Supreme Court has declared in another context, "[u]nreasonable charges exacted at this stage of the interstate movement become perpetuated in large part in fixed items of costs which must be covered by rates charged subsequent purchasers of the gas, including the ultimate consumer. It was to avoid such situations that the Natural Gas Act was passed." *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, 693 (1947).

It is of no importance here that the transactions by which Texas Eastern proposes to acquire the gas will themselves be, by virtue of a change in form, beyond the regulatory control of the Commission. The pipeline construction project and the transactions by which Texas Eastern will dispose of the gas thus acquired clearly are within the Commission's jurisdiction. The relevance of Texas Eastern's acquisition costs to these matters is unaffected by the form of the transaction; the Commission's warrant to inquire arises by virtue of its responsibilitiy to regulate the purchaser, regardless of the status of the seller.

Two courses are open to the Commission. It may, by clarification of the order presently under review, expressly disclaim any approval of the price to be paid for natural gas by the applicant. See *Kansas Pipe Line and Gas Co., et al., supra* note 4. Or it may reopen the record in the certificate proceeding to permit Texas Eastern to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity.

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The Commission's Order of June 23, 1959, is reversed, and the matter remanded to the Commission for further proceedings not inconsistent with the opinion of this court.

So ordered.

A true Copy, Test:
(SEAL)

/s/ JOSEPH W. STEWART
Clerk of the United States Court of Appeals for the District of Columbia Circuit

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1960

No. 15,412

(Filed Dec 8, 1960)

Public Service Commission of the State of New York,
Petitioner,

v.

Federal Power Commission, Respondent,
Texas Eastern Transmission Corporation, Intervenor.

On Petition to Review an Order of the
Federal Power Commission.

Before: Edgerton, Washington and Bastian, Circuit Judges.

Judgment

This case came on to be heard on the record from the Federal Power Commission, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this court that the order of June 23, 1959, of the Federal Power Commission on review in this case is reversed, and that this case is hereby remanded to the Federal Power Commission for further proceedings not inconsistent with the opinion of this court.

Per Circuit Judge Washington.

Dated: Dec 8, 1960
A True Copy, Test:
(SEAL)

/s/ JOSEPH W. STEWART
Clerk of the United States Court of Appeals for the District of Columbia Circuit

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, Arthur Kline, Joseph C. Swidler and Howard Morgan.

Docket Nos. G-12446 and G-12447

Texas Eastern Transmission Corporation

Docket No. G-12432

Continental Oil Company

Order Reopening Proceedings, Prescribing Procedures and Fixing Date of Hearing

(Issued July 14, 1961)

By our order of June 23, 1959, we issued a certificate of public convenience and necessity authorizing Texas Eastern Transmission Corporation (Texas Eastern) to construct and operate certain facilities including a compressor station at Rayne Field, Acadia Parish, Louisiana and some 22 miles of pipeline connecting Rayne Field to Texas Eastern's Beaumont-Kosciusko line.[1] The United States Court of Appeals for the District of Columbia Circuit in setting aside our aforesaid order and remanding this matter to us for further proceedings not inconsistent with the opinion of this Court, has suggested the following permissible courses:

> Two courses are open to the Commission. It may, by clarification of the order presently under review, expressly disclaim any approval of the price to be paid for natural gas by the applicant. See Kansas

[1] 21 FPC 860

Pipe Line and Gas Co., *et al.*, supra note 4. Or it may reopen the record in the certificate proceeding to permit Texas Eastern to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity.[2]

In our judgment the first course enunciated by the Court would too long leave unsettled matters of public importance and would provide inadequate protection to the public. Accordingly, we shall reopen the record in this proceeding to afford Texas Eastern an opportunity to make that showing contemplated by the Court's aforequoted latter course.

It is also necessary and reasonable that we define, but not necessarily limit, the issues and prescribe procedures, as hereinafter ordered, so as to guide the course of this reopened proceeding:

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The Commission orders:

(A) The consolidated proceeding designated as Docket Nos. G-12446, G-12447 and G-12432 is hereby reopened for the purpose of determining:

(1) Whether the public convenience and necessity require that the certificate issued in these proceedings by our order of June 23, 1959, and set aside by the Court of Appeals, be reissued in whole or in part;

(2) Whether the cost of the Rayne Field gas to Texas Eastern and its customers over the porductive life of the field is out of line;

(3) Whether Texas Eastern's proposal is in the public interest even if the cost of the gas to Texas

[2] *Public Service Commission of New York* v. *F.P.C.*, 287 F.2d 143, 146.

Eastern and its customers proves to be out of line; and

(4) If Texas Eastern's lease acquisition is not in the public interest by reason of the cost of the Rayne Field gas, whether Texas Eastern should be ordered to cease and desist from operating the "Rayne Field facilities" or as a possible alternative, whether Texas Eastern will agree that in future determinations of the justness and reasonableness of its rates under Sections 4 and 5 of the Natural Gas Act it will not claim actual costs associated with Rayne Field gas if the reasonable area price is lower than actual cost.

(B) In order to better resolve the aforesaid issues and that the hearing as hereinafter ordered may proceed in an expeditious manner, it is further ordered that on or before August 30, 1961, Texas Eastern file with the Commission and serve on all the parties a supplement to its applications herein to contain at a minimum:

(1) An up-to-date reserve and deliverability study for the Rayne Field to include actual production to date;

(2) Annual production plans for Rayne Field extending through to the estimated life of the field;

(3) An exhibit showing the proposed method of accounting by Texas Eastern for the Rayne Field transaction and all costs incident thereto; and

(4) Study or studies showing the cost of making natural gas from Rayne Field available to the Texas Eastern system, including every cost associated, either incurred and/or anticipated, in the acquisition, further development, production, operation and main-

tenance of Rayne Field which Texas Eastern claims should be considered in future determinations of the justness and reasonableness of Texas Eastern's rates. Such studies should reflect the anticipated annual changes in the cost of the Rayne Field gas through to the estimated year of abandonment.

(C) Pursuant to the authority conferred on the Federal Power Commission by the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held on October 23, 1961 at 10:00 a.m. (EDST) in a Hearing Room of the Federal Power Commission, 441 G Street, N. W., Washington, D. C., respecting the matters stated in paragraph (A) above. Parties previously permitted to intervene in this proceeding are deemed to be interveners in the instant ordered reopened proceeding. Additional protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D.C., in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) on or before August 10, 1961.

By the Commission.

JOSEPH H. GUTRIDE
Secretary.

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(Docketed Sept. 28, 1961)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket Nos. G-12446 and G-12447

In the Matter of

TEXAS EASTERN TRANSMISSION CORPORATION

Supplement to Applications in Accordance With Commission Order of July 14, 1961

Now Comes Texas Eastern Transmission Corporation (Texas Eastern) and files this Supplement to its Applications in the above dockets in response to the Commission's Order Reopening Proceeding, Prescribing Procedures and Fixing Date of Hearing issued herein on July 14, 1961. This Supplement is being filed by Texas Eastern for the sole purpose of complying with the aforesaid order of the Commission and such filing is made without prejudice to or waiver of Texas Eastern's right to contend that any or all of the information and data furnished hereby is beyond the scope of and irrelevant and immaterial to any issues which may be raised or tried under the order of the United States Court of Appeals for the District of Columbia Circuit remanding this proceeding to the Commission.

1.

In response to Subparagraph (1) of Paragraph (B) of the Commission's order, Texas Eastern attaches hereto as Exhibit X-2 an Estimated Reserves and Availability Study for the Rayne Field as of January 1, 1961, including estimated cumulative production to January 1, 1961. Actual production from January 1, 1961, to September 1, 1961, amounted to 30,060 MMCF of gas at 14.73 psia.

2.

In response to Subparagraph (2) of Paragraph (B) of the Commission's order, Texas Eastern states that it does not have any fixed "annual production plans for Rayne Field extending through to the estimated life of the field." One example of an annual production program is evidenced by the Availability Study included in Exhibit X-2 attached hereto. However, as the Commission observed in its Opinion No. 322, issued herein on June 23, 1959, by acquiring the Rayne Field leaess "* * * Texas Eastern will acquire control over the rate of production, and the minimum take or pay for provisions of the gas purchase contracts will be eliminated, thereby increasing the flexibility of the company's overall pipeline operations" (Slip Opinion Page 9). Texas Eastern plans to utilize the Rayne Field as a balance wheel in such manner as to provide the greatest possible economy and efficiency under changing day to day operating conditions. In the past, Texas Eastern's Rayne Field production has ranged from absolute minimum days when the field has been completely shut in to a maximum daily production of 181,679 MCF at 14.73 psia. In the future, Texas Eastern expects to continue to regulate its takes from the Rayne Field to meet the seasonal and cyclical needs of its system in such manner as will afford the most efficient operation of its pipeline system.

3.

In response to Subparagraph (3) of Paragraph (B) of the Commission's order, Texas Eastern attaches hereto as Exhibit X-3 a proposed method of accounting by Texas Eastern for the Rayne Field transaction and all costs incident thereto.

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4.

In response to Subparagraph (4) of Paragraph (B) of the Commission's order, Texas Eastern is attaching hereto as Exhibit X-4 an estimate of the cost of making natural gas from the Rayne Field available to the Texas Eastern system if gas should be produced in accordance with the Availability Study included in Exhibit X-2 attached hereto. Texas Eastern is unable to state definitely that all of the costs shown on Exhibit X-4 will actually be incurred or that such costs represent "every cost" which will be incurred in the further development, production, operation and maintenance of Rayne Field. Texas Eastern claims that the reasonable costs which it may incur as a prudent operator of the Rayne Field in conjunction with its pipeline system should be considered in future determinations of the justness and reasonableness of Texas Eastern's rates. The exact amount and nature of such costs will necessarily depend upon future operating circumstances which cannot be precisely predicated at this time. In addition, Texas Eastern claims it will be entitled to earn a reasonable rate of return on its investment in the Rayne Field in accordance with such principles as may be established in its future rate cases.

Wherefore, Texas Eastern supplements its applications in accordance with the Commission's order of July 14, 1961.

Respectfully submitted,

TEXAS EASTERN TRANSMISSION CORPORATION

By Walter E. Caine, Vice President

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Attorneys for Applicant:

Jack D. Head, Vice President and General Counsel
Texas Eastern Transmission Corporation
P.O. Box 1189
Houston, Texas

W. D. Deakins
Vinson, Elkins, Weems & Searls
New First City National Bank
21st Floor
Houston, Texas

Keith M. Pyburn
Texas Eastern Transmission Corporation
425 - 13th Street, N.W.
Washington 4, D. C.

Joseph F. Weiler
Texas Eastern Transmission Corporation
P. O. Box 1189
Houston, Texas

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VERIFICATION

STATE OF TEXAS
COUNTY OF HARRIS

WALTER E. CAINE, being first duly sworn, states that he is Vice President of Texas Eastern Transmission Corporation; that he is authorized to execute this affidavit; that he has read the above and foregoing Supplement and is familiar with the contents thereof; and that all allegations and facts contained therein are true and correct to the best of his knowledge, information and belief.

/s/ WALTER E. CAINE
Walter E. Caine

Sworn to and Subscribed before me this 27th day of September, 1961.

/s/ SYLVIA BUTLER
Sylvia Butler
Notary Public
County of Harris, Texas
My Commission expires
June 1, 1963

(SEAL)

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Decision

Docket No. G-12446
Texas Eastern Transmission Corporation

Docket No. G-12447
Texas Eastern Transmission Corporation

Docket No. G-12432
Continental Oil Company

UPON REOPENED PROCEEDINGS UPON REMAND
UNDER SECTION 7, NATURAL GAS ACT

(Issued June 29, 1962)

APPEARANCES

For the Brooklyn Union Gas Company
Edwin F. Russell
Harry G. Hill, Jr.
Brooklyn, New York

For New York Public Service Commission
Barbara M. Suchow
New York, New York

Kent H. Brown
Charles J. Cox
Albany, New York

For New Jersey Natural Gas Co.
Sidney M. Schreiber
Newark, New Jersey

For the United Gas Improvement Co.
J. David Mann, Jr.
John E. Holtzinger, Jr.
J. Frederick Moring
Washington, D. C.

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For Long Island Lighting Co.
David K. Kadane
E. M. Barrett
Bernard Hulkower
Mineola, New York

For Pennsylvania Public Utility Commission
Alan R. Squires
Hubert E. Squires
Harrisburg, Pennsylvania

For the Ohio Fuel Gas Company and the Manufacturers Light and Heat Company
Frederick H. Clark
Brooks E. Smith
William C. Hart
R. A. Rosan
New York, New York

For Public Service Electric and Gas Company
J. Harry Mulhern
Edward S. Kirby
Fred M. Broadfoot
James R. Lacey
Newark, New Jersey

William R. Duff
Washington, D. C.

For the Staff of the Federal Power Commission
George P. Lewnes
Washington, D. C.

FRAZEE, PRESIDING EXAMINER: This is a certificate proceeding under Section 7 of the Natural Gas Act.

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This historical background of this controversy shows that the Texas Eastern Transmission Corporation (Texas Eastern), a Delaware corporation with its principal place of business in Shreveport, Louisiana, is a natural-gas company owning and operating an interstate natural gas transmission system extending from Texas to the Philadelphia-Newark area.

On February 1, 1957, Texas Eastern executed gas purchase contracts with the Continental Oil Company (Continental), M. H. Marr (Marr), Sun Oil Company (Sun) and General Crude Oil Company (General Crude) to purchase their natural gas production in the Rayne Field, Acadia Parish, Louisiana at an initial price of 23.9¢ per Mcf including state taxes of 1.3¢ per Mcf.

On April 22, 1957, Texas Eastern filed an application[1] with the Federal Power Commission seeking a certificate of public convenience and necessity authorizing it to construct and operate a 2200 horsepower compressor station and 22 miles of 14-inch pipeline for the purpose of transpotring natural gas from Rayne Field to Opelousas, Louisiana, where the gas will be connected to its Beaumont-Koscuisko interstate pipeline system.

Applications for certificates of public convenience and necessity for the sale of natural gas from Rayne Field to Texas Eastern under the aforesaid gas purchase contracts, were filed by Continental[2] on April 17, 1957, Marr[3] on

[1] Docket No. G-12446.
[2] Docket No. G-12432.
[3] Docket No. G-12885.

July 15, 1957, Sun [4] on July 17, 1957 and by General Crude [5] on July 22, 1957.

These applications were consolidated and a hearing was held thereon. An initial decision [6] was filed by the Presiding Examiner

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on April 15, 1958, authorizing the proposals and issuing unconditioned certificates of public convenience and necessity under Section 7 of the Natural Gas Act. Exceptions to the initial decision were filed with the Commission.

Before the Commission acted on the exceptions the Court of Appeals, 3rd Circuit, in the *Public Service Commission of New York* v. *F.P.C.*, (CATCO) 257 F. 2d 717 [7] reversed an order of the Commission granting unconditioned certificates of public convenience and necessity for the sale of natural gas from off-shore Louisiana by independent producers at 22.4¢ per Mcf, including tax.

Following the 3rd Circuit decision the producers herein, Continental, Marr, Sun and General Crude, each filed notices of the termination of their sales contracts with Texas Eastern and requested withdrawal of their applications for certificates of public convenience and necessity, which requests were granted by the Commission.

Texas Eastern thereupon filed a petition to reopen the hearing and to amend its application for a certificate of public convenience and necessity to reflect a change in its plan for acquiring the Rayne Field gas. Under the new plan Texas Eastern proposed to acquire the leasehold interests in the reserves formerly committed to the contracts by Continental, Marr, Sun and General Crude.

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[4] Docket No. G-12913.

[5] Docket No. G-12931.

[6] 21 F.P.C. 869.

[7] Affirmed sub. nom. *Atlantic Refining Co.* v. *Public Service Commission*, 360 U. S. 738 (1959), commonly referred to as the "CATCO" case.

The petition to reopen was granted, and at the conclusion of the hearing a motion to waive the initial decision was made, which was granted by the Commission.

On June 23, 1959, by its Opinion No. 322, *Texas Eastern Transmission Corporation*, 21 F.P.C. 860, the Commission granted an unconditioned certificate of public convenience and necessity for the compressor station and 22 miles of 14-inch line to connect the Rayne Field gas to the Texas Eastern interstate pipeline at Opelousas. In this opinion the Commission said, at page 861, "The Rayne Field is one of the few large and fully developed gas reserves *not presently committed to and serving a market*" (emphasis supplied). In its Third Supplement to the aforesaid petition to reopen the hearing filed December 15, 1958,

"Texas Eastern advised the Commission that it had acquired the right to purchase the entire working interest of Continental, Marr, Sun and General Crude in the Rayne Field leases, under the terms and conditions of the final Lease Purchase Agreement dated December 4, 1958, which it filed with the Commission," *Cf.* 21 F.P.C. 860, 862. Texas Eastern would thereby acquire "the oil and gas leases and related properties . . . insofar as they apply to the proved reserves" p. 863. The Commission made no inquiry into the cost to Texas Eastern of acquiring the Rayne Field leases and related properties but the Commission did state, at page 864:

> "In our judgment, the record in this case amply supports the conclusion that the elements of public convenience and necessity are satisfied by Texas Eastern's modified project, without examining into the cost to Texas Eastern of the Rayne Field leases to the extent advocated . . . . Texas Eastern has not filed an application for a certificate authorizing the acquisition of the

Rayne Field leases and we have no authority to issue such a certificate. However, we have considered all the circumstances pertaining to the company's acquisition of the Rayne Field leases and the effects of the public proposed to be served, including the extent and accessibility of this gas supply; the benefits thereof in enabling Texas Eastern to meet consumer demands; the terms and conditions of the lease sale and purchase agreements including the price to Texas Eastern of the gas thereunder; the claimed savings accruing to Texas Eastern from acquiring the leases rather than purchasing the gas under gas purchase contracts; and the other factors present here. And we conclude that the company's modified project, as it would include and rely on the acquisition of the Rayne Field leases, is required by the public convenience and necessity and otherwise meets the requirements of Section 7(e) of the Act."

The Commission went on to say that Texas Eastern, through Louisiana Gas,[8] would pay Continental *et al.* the sum of $12,420,500 in cash upon the issuance by the Commission of a satisfactory certificate of

public convenience and necessity to Texas Eastern and Texas Eastern will simultaneously make 16 serial promissory notes to each of the sellers payable over a 16-year period in the total amount of $121,975,200 as the balance of the purchase price of the leases. The notes were to be secured by a mortgage and without interest. The sellers retained a production payment out of the liquids produced with the gas, they also reserve the leasehold rights to all crude oil production and gas which may be produced from

[8] The Louisiana Gas Corporation is a Delaware corporation formed by Texas Eastern for the purpose of acquiring the Rayne Field leases through it.

below the Nodosaria A Sand. The leases to be conveyed to Texas Eastern were alleged to cover an estimated reserve of 988,771,000 Mcf of natural gas.

The Public Service Commission of the State of New York filed a motion for a rehearing in Opinion 322 in order to "determine upon what price for the acquisition of the Rayne Field leaseholds, public convenience and necessity would require authorization of the related construction herein proposed by Texas Eastern," contending that this is "the Commission's only opportunity to require producer disclosure of the costs associated with this gas and their relation to the sale price" of these leases. 21 F.P.C. 860, 864. The motion was denied and the Public Service Commission of the State of New York filed its petition in the Court of Appeals, D. C. Circuit, for a review of the Federal Power Commission's Opinion No. 322.

The Court of Appeals, D. C. Circuit, on December 8, 1960, in *Public Service Commission of the State of New York* v. *F.P.C.*, 143 F. 2d 143, held the acquisition of the leasehold interest in gas reserves was beyond the jurisdiction of the Commission, nevertheless the pipeline construction project and the transactions by which Texas Eastern will dispose of the gas thus acquired clearly are within the jurisdiction of the Commission, and the Commission was required, under the CATCO[9] decision, to inquire into Texas Eastern's acquisition costs based upon the Commission's responsibility to regulate the purchaser (Texas Eastern), regardless of the status of the seller. The order of the Commission in its Opinion 322 was reversed and remanded, the Court stating:

> "Two courses are open to the Commission. It may, by clarification of the order presently under review, expressly disclaim any approval of the price to be paid for natural gas by the applicant. See Kansas Pipe Line

[9] See footnote 7, *supra*.

and Gas Co. et al., supra note 4. Or it may reopen the record in the certificate proceeding to permit Texas Eastern to establish by adequate evidence that the acquisition costs which it proposed to incur will be consistent with the public convenience and necessity."

On July 14, 1961, the Commission issued its "Order Reopening Proceeding, Prescribing Procedures and Fixing Date of Hearing," 26 F.P.C. 167. Texas Eastern was afforded the opportunity to "establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity." [10] The order also defined, but did not limit, the issues as a guide to the course of the reopened proceeding which was to be convened on October 23, 1961. Parties previously permitted to intervene were permitted to intervene in the reopened proceeding.

Hearings were held at which only Texas Eastern offered evidence. At the conclusion of the hearing on December 7, 1961, those desiring to do so were permitted to file briefs, were filed by Texas Eastern, the Staff, the Public Service Commission of New York, the Public Service Electric and Gas Company, the Long Island Lighting Company, the United Gas Improvement Company and the Philadelphia Electric Company, the latter two filed a joint brief.

The Public Service Commission of New York, in its petition to review the Commission's order in Opinion 322, complained only of the Commissions' finding as to the cost of the Rayne Field acquisition, and the Court of Appeals, D. C. Circuit, in its decision made no reference to the feasibility of the proposed construction, nor the market for the Rayne Field gas. These aspects of a certificate application under Section 7 of the Act were not among the issues defined by

[10] This being the second of the "two courses . . . open to the Commission." *Public Service Commission of New York* v. *F.P.C.*, 287 F. 2d 143, 146.

the Commission to be heard in this reopened proceeding. They are herein considered to have been affirmatively determined by the Commission in its Opinion 322, 21 F.P.C. 860.

Before considering the merits of the Texas Eastern proposal the question of the jurisdiction of the Commission, under the Natural Gas Act, over the acquisition of these Rayne Field leases warrants consideration because the Staff, and at least one of the intervenors, vigorously contend in their briefs the Commission does have jurisdiction over such acquisitions.

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Section 1(b) of the Natural Gas Act states, in part,

> "The provisions of this Act shall apply to the *transportation* of natural gas *in interstate commerce*, to the *sale* in *interstate commerce* of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and *to natural gas companies engaged in such transportation or sale* . . ." (Emphasis Supplied)

This record discloses the Rayne Field leases were acquired by Texas Eastern without the approval of the Commission. This record, as was the first record (21 F.P.C. 860, 861), is clear that the natural gas under the Rayne Field leases acquired by Texas Eastern, *was not*, at the time of the acquisition, connected with any pipeline transporting natural gas in interstate commerce and, further, the natural gas under the Rayne Field leases acquired by Texas Eastern had not, at the time of the acquisition, been dedicated to any sale in interstate commerce. As far back as 1949, the Commission contended it had jurisdiction over the sale by Panhandle of certain leases and leasehold interests covering an estimated 12 per cent of the total gas reserves of Panhandle but the Supreme Court in *F.P.C.* v.

Panhandle Eastern Pipe Line Company et al., 337 U. S. 498, recognized and upheld the traditional industry practice of a natural gas company to buy and/or sell leases and leasehold interests which are "*not connected* with any pipeline system" (emphasis supplied) without the approval of the Commission. From this, it would appear, one of the prerequisites to Commission jurisdiction is that the natural gas under the leases or leasehold interests must first be connected to a pipeline system transporting natural gas in interstate commerce. The Commission argued before the D. C. Circuit, in the following case, it did not have jurisdiction over Texas Eastern's acquisition of the Rayne Field leases and leasehold interests and, in its opinion, the Court of Appeals, D.C. Circuit, in *Public Service Commission of the State of New York* v. *F.P.C.*, 287 F. 2d, 143, 145 said ". . . the Commission has been held to lack jurisdiction over gas leases" citing *F.P.C.* v. *Panhandle, supra.* It is contended in the briefs filed herein the Supreme Court reversed its decision in the *Panhandle* case, *supra,* by its decision in *Phillips Petroleum Co.* v. *Wisconsin et al.*, 1954, 347 U. S. 672. Quite to the contrary. In *Phillips* the Supreme Court recognized and reaffirmed the Panhandle prerequisite of the gas being attached to an interstate system of pipelines before the Commission acquired jurisdiction. In *Phillips* the Supreme Court was meticulous in saying, at page 675,

> "The gas flows from the producing wells, in most instances at well pressure, through a network of converging pipelines of progressively larger size to one of twelve processing plants, where extracable products and impurities are removed. . . . After processing is completed, the gas flows from the processing plant through an outlet pipe, of varying lengths up to a few hundred feet, to a delivery point where the gas

is sold and delivered to an interstate pipeline company. The gas then continues its flow through the interstate pipeline system until delivered in other states."

From this quotation it is obvious the natural gas under consideration by the Supreme Court in its *Phillips* opinion, *supra,* had *previously* been attached to, or *connected with,* an interstate system of pipelines and, because of this connection, the gas flowed in interstate commerce and thereby become subject to the jurisdiction of the Commission.

In applying the principles of the *Panhandle* and *Phillips* opinions, *supra,* to the evidence of record in this hearing, it is concluded the Commission was without jurisdiction over the Rayne Field lease and leasehold acquisition and the natural gas under said leases and leaseholds by Texas Eastern until (1) the gas was connected to an interstate system of pipelines or (2) the gas was dedicated to a sale in interstate commerce.[11] This is not to say, however, that the Commission is without jurisdiction to regulate the purchaser of the natural gas, in this case Texas Eastern, and to determine at what price the public convenience and necessity requires the dedication of the Rayne Field gas

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[11]In arriving at this conclusion the Examiner is fully cognizant of an initial decision filed January 8, 1962, in *Tennessee Gas Transmission Company et al.,* Docket No. G-14562 et al. Subsequent to the filing of this decision, and before the Commission had acted upon the exceptions filed thereto, amended applications were filed by all parties which materially changed the manner in which the natural gas would be acquired from the producers. These amended filings were accepted by the Commission and upon motions duly filed the proceedings were reopened and remanded for further hearing upon the amended applications. Thus the matters disposed of by the Examiner in his initial decision are no longer before the Commission. See Commission order issued March 26, 1962, in *Tennessee Gas Transmission Company et al.,* Docket No. G-14562.

by Texas Eastern to a sale in interstate commerce for resale to consumers of natural gas in other states. The Courts have been unequivocal in requiring the Commission to give careful consideration to the price paid for natural gas by an interstate system to the end that natural gas may be delivered to the consumer at the lowest reasonable cost, or price.

Following the issuance of the unconditioned certificate of public convenience and necessity by the Commission on June 23, 1959, by its Opinion 322, *supra,* Texas Eastern moved promptly and acquired the Rayne Field leases and leasehold interests on July 27, 1959.[12] In its ordering paragraph (D) the Commission gave Texas Eastern six months' time from the date of the issuance of Opinion 322 within which to construct the facilities proposed and authorized and to place such facilities in operation. Texas Eastern on March 29, 1960, filed its affidavit stating the facilities had been constructed and itemized the costs thereof. Between the date the facilities were placed in operation and January 1, 1961, Texas Eastern took approximately 65,000 MMCF of natural gas into its interstate system from the Rayne Field for resale in interstate commerce.

Because the Commission did not have jurisdiction over the acquisition of these Rayne Field leases and the natural gas thereunder presents no legal barrier to the Commission's jurisdiction over the purchaser of the gas. This jurisdiction attaches upon the acceptance by Texas East-

[12] Also, on this same date Texas Eastern entered into a management agreement, through the Louisiana Gas Company with Continental Oil Company, one of the sellers and the principal developer of Rayne Field, under which Continental would manage, control, further explore, develop, maintain, produce and deliver the Rayne Field leases and gas for the use and benefit of Texas Eastern, all as shown by Exhibit X-19 herein.

ern of a certificate of public convenience and necessity issued by the Commission upon the application of Texas Eastern for authorization to connect, by the construction and operation of the facilities herein proposed, the Rayne Field gas reserves to its interstate system, which, by its market showing in the previous hearings herein dedicated this particular Rayne Field gas to out-of-state markets for resale for ultimate public consumption. The Act, as above shown, confers jurisdiction upon the Commission over "the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use." And, as was said in *Atlantic Refining Co. et al.* v. *Public Service Commission of New York*

et al., (CATCO) 1959, 360 U.S. 378, 389, "Section 7(e) vests in the Commission control over the conditions under which gas may be initially dedicated to interstate use." The Supreme Court, went on to say ". . . once so dedicated" by the acceptance of a certificate of public convenience and necessity "there can be no withdrawal of that supply from continued interstate movement without Commission approval." From the words of the statute—the Natural Gas Act—and the decision of the Supreme Court in the CATCO case, *supra*, there can be no doubt as to the jurisdiction of the Commission over the conditions under which Texas Eastern may transport and sell the Rayne Field gas in interstate commerce.

The conditions under which Texas Eastern may transport and sell the Rayne Field gas remain for consideration. By its order reopening these proceedings the Commission directed Texas Eastern to file (1) an up-to-date reserve and deliverability study for the Rayne Field to include actual production to date, (2) annual production plans for

Rayne Field extending through to the estimated life of the field, (3) an exhibit to show the proposed method of accounting by Texas Eastern for the Rayne Field transaction and all costs incident thereto, and (4) studies showing the cost of making natural gas from Rayne Field available to the Texas Eastern system, including every cost associated, either incurred and/or anticipated, in the acquisition, further development, production, operation and maintenance of Rayne Field which Texas Eastern claims should be considered in future determinations of the justness and reasonableness of Texas Eastern's rates. Thus the first issue to be considered is the Mcf cost of the Rayne Field gas to Texas Eastern, or, in lieu thereof, the initial price at which it may take, as required by the public convenience and necessity, the Rayne Field gas into its interstate transmission system for transportation and resale in interstate commerce for ultimate public consumption. The Commission in its Opinion 322, 21 F.P.C. 860, 867 found, based upon the evidence then before it, the "average cost of producing the Rayne Field gas would be 20.59¢ per Mcf," exclusive of severance taxes.

The evidence by Texas Eastern would show a residue [13] gas reserve in the Rayne Field on January 1, 1961 of 924,678,000 Mcf at 14.73 psia

and 60° F.[14] (Ex. X-2, Sch. 1, Col. M, ln. 27), together with an estimated availability commencing January 1, 1961,

[13] The term "residue gas," as here used, refers to that gas which is available for sale after having taken into account the combination of losses due to condensation in the reservoir, the extraction of separator or condensate and plant liquids (tr. 1815).

[14] In Ex. X-2, Sh. 1, Col. m, ln. 16, it was estimated there was initial gas in place of 1,183,517,000 Mcf and, on ln. 17, terminal gas in place of 89,479,000 Mcf of which, the witness Olson, a vice president of DeGolyer and MacNaughton, testified 93 per cent would be recovered from Rayne Field by Texas Eastern. (tr. 2331)

through the year 1989 of 29,586,356 barrels of condensate and 21,812,852 barrels of plant liquids [15] (Ex. X-2, Sh. 2, Cols. (d) and (e), ln. 30). The witness who sponsored this reserve study had previously testified in the first hearing sponsoring Exhibit M-13, an estimate of the natural gas reserves in the Rayne Field as of January 1, 1959, showing then an estimated reserve, as of that date, of 988,771,000 Mcf (tr. 1813). His testimony now is that four additional wells were drilled in the Rayne Field between January 1, 1959 and January 1, 1961 which resulted in proving up additional reservoirs but had little effect upon the total field reserves. Regarding the difference between his January 1, 1959 estimated reserve of 988,771,000 Mcf and his January 1, 1961 estimated reserve of 924,678,000 Mcf he says is accounted for by the interim production of 65,396,000 Mcf (tr. 1813) (988,771,000−65,396,000−923,375,000 Mcf). Another witness, sponsoring the same exhibit, stated two additional dual completion wells would be required to be drilled in 1962, one dual completion well in 1971 and an additional dual completion well in 1972 in order to complete the development of Rayne Field. During the life of the field certain of the existing wells would have to be recompleted to deeper producing sands to increase the deliverability from that sand. The estimated cost for the drilling of the four dual completion wells was shown to be $2,000,000 (Ex. X-5, p. 2), these costs, in addition to well workover and recompletion costs are to be paid by Texas Eastern since it owns the leases. It appears virtually impossible, from the record, to determine the future costs to Texas Eastern for the Rayne Field since they are

[15] The revenue from the sale of this condensate and plant liquids goes first, to partially reimburse Continental for the management and operation of Rayne Field and, second, the remainder to Continental *et al.* as their interests may be, until the mortgage from buyer to sellers is paid in full. Thereafter any revenue from this source is to be retained by Texas Eastern.

predicated upon assumptions and estimates. The costs are actually unimportant since the issue here depends upon the base price at which the public interest requires the Rayne Field gas from Texas Eastern. This "in line" price will subsequently be developed.

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Since this is a certificate hearing under Section 7 of the Act the immediate use is to determine at what price—as CATCO says, under what conditions—may Texas Eastern dedicate the Rayne Field gas to interstate use, to state this issue in different words, with the same purport, at what price does the public convenience and necessity[16] require the Rayne Field gas from Texas Eastern? In considering these conditions—or the initial price—the Examiner will again refer to CATCO, *supra*, and use that decision as his guide, as did the Commission itself in its Opinion No. 351, issued January 22, 1962, in a matter very comparable to these proceedings, to determine an "in line" initial price. In CATCO the Supreme Court said the Act does not require a determination of just and reasonable rates in a certificate application, as is required in a rate case. The Court then went on to say a determination of a "just and reasonable" rate is not a prerequisite to the issuance of a certificate, however, the Commission is required to give most careful scrutiny to proposed initial prices. These must be shown to be required by the public convenience and necessity otherwise the Commission in the exercise of its discretion may attach such conditions to the certificate of public convenience and necessity as it believes necessary or the application must be denied. In its review of the Commission's Opinion No. 322 the Court

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[16] The basis for regulation under the Natural Gas Act is the "public interest." Section 1(a) of the Act, see also *F.P.C.* v. *Sierra Pacific Power Co.*, 350 U. S. 348, 355.

of Appeals, D. C. Circuit, 287 F. 2d 143, 145 in applying the CATCO rule said, "we read that decision as holding that where a natural gas company seeks an unconditional certificate to make new sales of natural gas at proposed prices which are 'out of line' with existing prices, or which will tend to have an inflationary impact on the natural gas market, it is under an obligation to demonstrate upon the record the reasons why such increased prices are justified by the 'public convenience and necessity'." The Court then went on to say the "petitioner claims that the total cost to Texas Eastern for each Mcf of Rayne Field gas will be 22.89 cents, including Louisiana tax of 2.3 cents" and then they said ". . . we think it clear that the price is high enough to be in the disputed area to which the CATCO rule applies."

The record contains evidence of the cost of purchasing gas, at certificated prices, and transporting this gas to Opelousas, Louisiana—this being the point where the Rayne Field gas enters the Texas Eastern interstate system—to compare these F.O.B. Opelousas prices with the proposed Rayne Field prices.

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Texas Eastern says it pays 14.4¢ per Mcf at 15.025 psia for Wilcox Trend gas and the estimated cost for transportation to Opelousas was 9.6¢ per Mcf for a total cost, at that point, of 24.0¢ per Mcf. Gas purchased in Texas Railroad Districts 2 and 4 at 15.6¢ per Mcf at 15.025 psia costs 9.1¢ per Mcf for transportation for an Opelousas cost of 24.7¢ per Mcf and that Pemex gas costing 15.6¢ per Mcf at 15.025 psia costs 9¢ per Mcf transportation for an Opelousas total cost of 24.6¢ per Mcf.

Also the record contains evidence of prices being paid, and related information on sales, in South Louisiana for natural gas under long term contracts dated between Jan-

uary 1, 1958 and June 30, 1959. As will be seen hereafter these prices are not applicable here.

Here, as the Commission said in its Opinion 351, the initial price should be determined as of the dates of the various contracts of acquisition which were initially executed on February 1, 1957 and the application dedicating the gas to an interstate market filed with the Commission on April 22, 1957. Therefore the "in line" price as of April 22, 1957 must be herein determined since that was the date on which the Rayne Field gas was dedicated to an interstate market by Texas Eastern. The area price levels as announced by the Commission in its Statement of General Policy No. 61-1 on September 28, 1960, 24 F.P.C. 818, as amended,[17] were not then applicable and no area rate proceedings have yet been held by the Commission to determine area rate levels.

There is a further reason why the "in line" price must be determined as of April 22, 1957, if this was not so then Texas Eastern might be enriched by the procedural delays herein. The price at the time of the dedication of the gas to an interstate market must be "in line" with other prices in the area as of that period.

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While the CATCO case did not define what was meant by a price being "in line" the Ninth Circuit said in the *United Gas Improvement Co.* v. *F.P.C.*, 283 F. 2d 817, 823

[17] By its Fourth Amendment to its Statement of General Policy No. 61-1, issued October 31, 1961, the Commission said "It is apparent that it would be contrary to the public interest for us to maintain a price level in Southern Louisiana" of 21.5¢ per Mcf at 15.025 psia, plus state taxes, as announced in its First Amendment on October 25, 1960 "which the courts have ruled out of line." We conclude that, effective this date" October 31, 1961, "the ceiling price level for initial sales in Southern Louisiana, inclusive of state taxes, shall be 21.25¢ per Mcf (at 15.025 psia)." Since the Louisiana state tax of of that date was 2.3¢ per Mcf then the base ceiling price, exclusive of state taxes, would be 18.95¢ per Mcf at 15.025 psia.

the "line" to be referred to "may properly be referenced to relevant existing producer prices under which substantial amounts of natural gas move in interstate commerce" and that the prices must be comparable. See, *Public Service Commission of New York* v. *F.P.C.*, 287 F. 2d 146, cert. denied 365 U.S. 880; *United Gas Improvement Co.* v. *F.P.C.* 287 F. 2d 159; *United Gas Improvement Co.* v. *F.P.C.* 290 F. 2d 133.

In its Opinion 351, the Commission had under consideration, on remand from the Supreme Court in CATCO, a sale of natural gas by the Continental Oil Company—the same Continental Oil Company that thereafter sold its interest in the Rayne Field leases to Texas Eastern—and others to the Tennessee Gas Transmission Company from leases located "below seabed out in the Gulf of Mexico some 15 to 25 miles offshort from Cameron and Vermilion Parishes,[18] Louisiana," 360 U.S. 378, 382. The CATCO contracts with Tennessee provided for an initial base price of 21.4¢ per Mcf at 15.025 psia, plus 1¢ tax. This price was much higher than Tennessee was then paying for gas. The Commission, in Opinion 351, said at mimeo. page 7, "a price . . . is not in line as of a given time if it is the highest price or in the highest group of prices theretofore paid" and held, as did the Supreme Court, that a 1956 contract for the sale of gas at that initial base price was clearly out of line. A certificate was issued conditioned at a price of 18.5¢ per Mcf at 15.025 psia as being the "in line" price even though that price was higher than the majority of prices in that area in 1956.

In summary, the various initial price computations are as follows, (1) the original gas purchase contracts provided for an initial price to Texas Eastern of 22.6¢ per

[18] Rayne Field is located in Acadia Parish, Louisiana, which is immediately north of and contiguous to Vermilion Parish, and Cameron Parish is immediately west of and contiguous to Vermilion Parish, all in the State of Louisiana.

Mcf plus 1.3¢ per Mcf for a total of 23.9¢ per Mcf, see 21 F.P.C. 860, 861; then Texas Eastern acquired the leases and, by their Exhibit X-15 herein, show a total cost of service, including a 6 per cent rate of return plus estimated

Federal income taxes, of $138,950,200, an average cost of 18.79¢ per Mcf at 15.025 psia, exclusive of Louisiana tax; and in Exhibit X-16, by including the 2.3¢ per Mcf Louisiana tax, the average cost amounts to 21.09¢ per Mcf at 15.025 psia; further, in Exhibit X-17, when the royalty and other outside interest gas is included at 22.6¢ per Mcf, the average cost mounts to 21.37¢ per Mcf and, finally, in Exhibit X-18 when all of its costs, and estimated costs, are computed, the average cost becomes 24.34¢ per Mcf at 15.025 psia. The intervenors and the Staff stress the 24.34¢ per Mcf cost as being "out of line."

Since the Commission lacked jurisdiction over the price which Texas Eastern paid for the Rayne Field leases and the natural gas reserves thereunder then it seems immaterial, at least in a certificate application under Section 7 of the Act, what price was paid. The question then is, at what price does the public interest require the issuance of a certificate of public convenience and necessity dedicating the Rayne Field gas ot an interstate market, or should the application be denied. The Ninth Circuit appropriately answered this question in *United Gas Improvement Co.* v. *F.P.C.* 283 F. 2d 817, 822, when it said, "the public has an interest in both obtaining reasonable rates and the expeditious dedication of needed new gas reserves."

The Commission found in Opinion 351, mimeo. page 6, "the average of the initial base prices for contracts dated during the respective quarters of 1956 weighted by 1958 volumes are as follows: 17.00 cents, 18.22 cents, 17.38 cents, 16.65 cents" and that "a price not in excess of 18.5 cents

would be 'in line,' although higher than the majority of prices in 1956." This, then, was the Commission's "in line" base price, for a volume of natural gas approximately double the Rayne Field estimated reserves, for contracts executed in August of 1956. As hereinabove stated the "in line" base price here is to be determined as of April 1957, some eight months later. Also, the Commission, by its Fourth Amendment to its Statement of General Policy No. 61-1, on October 31, 1961, *more than four years afterwards,* found the ceiling price level for this area to be 18.95¢ per Mcf, which is but .45¢ per Mcf increase in the "in line" price during the four year period of time.

Predicated upon the record herein and the applicable Commission and court decisions it is herewith determined the "in line" base price, exclusive of taxes, at which the public interest requires the issuance of a certificate of public convenience and necessity to Texas Eastern is 18.5¢ per Mcf at 15.025 psia and a certificate of public convenience and necessity, as so conditioned, is herewith issued to Texas Eastern as hereinafter ordered.

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It seems to be appropriate now to consider the effect of the Rayne Field gas costs in relation to any future rates of Texas Eastern. Since this is not a rate case under Sections 4 or 5 of the Act, the Rayne Field gas has already become, or will become upon Texas Eastern's acceptance of the conditioned certificate issued herein, part of the combined gas supply available to Texas Eastern's integrated pipeline system, the future rates of which may, as in the past, be predicated on a system-wide cost of service and a system-wide method of allocation. Combining the costs pertaining solely to the Rayne Field gas with the costs of the remainder of the gas supply available to Texas Eastern means "rolling in" gas costs which may be appre-

ciably greater than the average cost of Texas Eastern's gas supply existing immediately prior to Texas Eastern's acquisition of the Rayne Field gas and leases.

Therefore, to make the information, in the manner herein directed, available in identifying costs in any future rate hearing, or other proceedings, a condition will be attached to the certificate of public convenience and necessity herein issued to Texas Eastern to maintain, as a part of its primary corporate books of account, separate accounts and records in a manner which at all times will show: (1) the acquisition costs together with the costs involved in producing the Rayne Field gas which is attributable to the working interest in the leases acquired from Continental *et al.*, and (2) all remaining costs incurred by Texas Eastern to make such gas available to its interstate pipeline system, so that by combining the costs of these two categories, the total cost of the Rayne Field acquisition and gas to Texas Eastern as measured at the tailgate of the Rayne Field processing plant will be separately recorded.

Specifically, Texas Eastern is directed to maintain, during the period Rayne Field gas is available to it, in strict accordance with the Commission's Uniform System of Accounts, supplemental accounts which will at all times provide summary and detailed data respecting the cost of the Rayne Field gas to Texas Eastern, as follows:

(1) Respecting the costs of the acquisition of the gas leasehold interests, incurred or to be incurred, by Texas Eastern in its transactions with the producer companies, this accounting must at all times be clear, understandable and evidenced by appropriate and sufficient documents, such as copies of contracts, agreements, correspondence and all memoranda including that relating to Federal income taxes;

(2) The write-off of note payments;

(3) Concerning additional costs borne or to be borne by Texas Eastern in making the gas available to its interstate pipeline system; all gas plant, depreciation, depletion and amortization reserves, revenues, and revenue credits, operating expenses, depreciation provisions, taxes, etc. *i.e.*, all items which would be involved in a cost of service for the Rayne Field gas to Texas Eastern;

(4) All inter-company transactions shall be recorded;

(5) Appropriate records of the Mcf volumes of gas as related to Items (1) through (4) above.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this reopened proceeding, the evidence adduced and the briefs filed, the Presiding Examiner finds and concludes, in addition to the findings and conclusions hereinabove stated, that:

(1) The Texas Eastern Transmission Corporation (Texas Eastern) is a Delaware corporation whose principal place of business is located at Shreveport, Louisiana, is engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is, therefore, a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sale of natural gas from the Rayne Field, Acadia Parish, Louisiana, by Texas Eastern, all as more fully described in its application for a certificate of public convenience and necessity and as fully considered hereinabove, is, or will be upon the ac-

ceptance of the conditioned certificate of public convenience and necessity issued herein, made in interstate commerce, subject to the jurisdiction of the Commission, and such sale by Texas Eastern, together with the construction and operation of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

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(3) Texas Eastern is capable of properly doing the acts and performing the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission issued thereunder.

(4) The sale of natural gas from the Rayne Field by Texas Eastern, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, is required by the public convenience and necessity, and certificates therefor should be issued as hereinafter conditioned and ordered.

(5) It is necessary and appropriate in the administration of the Natural Gas Act that the initial price charged by Texas Eastern for the sale of natural gas from the Rayne Field in interstate commerce be conditioned at 18.5¢ per Mcf, exclusive of taxes, at 15.025 psia.

(6) It is further necessary and appropriate in the administration of the Natural Gas Act that Texas Eastern maintain at all times, during the period the Rayne Field gas is available to it, complete and separate records to accurately reflect the total cost of acquiring the Rayne Field leases and the later

costs for producing the Rayne Field gas all as more fully detailed and directed hereinabove.

(7) The public interest requires the issuance of a new certificate of public convenience and necessity to Texas Eastern conditioned at an initial price of 18.5¢ per Mcf of natural gas at 15.025 psia and further conditioned upon the keeping of separate records by Texas Eastern for the Rayne Field natural gas as hereinabove specified in more detail.

(8) The conditions hereunto attached to the new certificate of public convenience and necessity herein issued to Texas Eastern are found to be necessary and required by the public convenience and necessity and in the public interest.

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ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure, as amended, that:

(A) A permanent certificate of public convenience and necessity is hereby issued to the Texas Eastern Transmission Corporation conditioned so that the base price, exclusive of Louisiana state taxes, for the Rayne Field natural gas, from the date of initial service, shall be, until lawfully changed in the manner provided by the Natural Gas Act, 18.5¢ per Mcf at 15.025 psia, the certificate hereby issued is further conditioned to require Texas Eastern Transmission Corporation to keep and maintain complete, accurate and separate records reflecting its costs of acquisition, maintenance, operation, production, revenue, etc., as more completely specified hereinabove.

(B) The conditioned permanent certificate of public convenience and necessity herein issued to the Texas Eastern Transmission Corporation is not transferable and shall be effective only so long as it continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission issued thereunder.

(C) The granting of the conditioned permanent certificate of public convenience and necessity to the Texas Eastern Transmission Corporation herein is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Texas Eastern Transmission Corporation.

HARRY W. FRAZEE
Harry W. Frazee,
Presiding Examiner

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket Nos. G-12446, G-12447

TEXAS EASTERN TRANSMISSION CORPORATION

Exceptions of Texas Eastern Transmission Corporation to Decision of Presiding Examiner Issued June 29, 1962 and Motion for Oral Argument

Docketed September 14, 1962

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Now comes Texas Eastern Transmission Corporation (Texas Eastern), applicant in the above proceedings, and files its exceptions to the decision of the Presiding Exam-

iner issued herein on June 29, 1962, and moves for oral argument thereon.

1

Texas Eastern excepts to Paragraph (A) of the Examiner's proposed order, Paragraphs (2), (4), (5), (7) and (8) of the Examiner's findings and conclusions, and Pages 10 through 16 of the Examiner's decision, wherein the Examiner attempts to grant Texas Eastern a certificate of public convenience and necessity authorizing the sale by Texas Eastern of natural gas from the Rayne Field conditioned at an initial price of 18.5¢ per Mcf, exclusive of taxes, at 15.025 psia and as grounds for this exception, Texas Eastern would respectfully show the following:

(a) This proceeding does not involve an application by Texas Eastern for a certificate of public convenience and necessity authorizing the sale of natural gas from the Rayne Field. Instead, the application filed by Texas Eastern in these proceedings seeks a certificate of public convenience and

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necessity authorizing the construction and operation of expansion facilities at a total estimated cost of approximately $49,088,000 and the sale of approximately 101,000 Mcf per day of additional gas to 11 of Texas Eastern's customers under its effective firm rate schedules on file with the Commission. Included in the proposed expansion facilities were a compressor station and 22 miles of 14-inch lateral line to connect the Rayne Field in Acadia Parish, Louisiana, to Texas Eastern's pipeline system at Opelousas, Louisiana. However, Texas Eastern did not propose in its application, as amended and supplemented, to make any separate or identifiable sale of gas from the Rayne Field and the Commission's order of June 23, 1959,

granting to Texas Eastern the certificate of public convenience and necessity requested by its application did not purport to grant Texas Eastern a certificate authorizing any separate or identifiable sale of gas from the Rayne Field. Further, the Commission's order of December 5, 1958, granting Texas Eastern temporary authority to construct and operate facilities and make the sales proposed in its application herein expressly excluded "the proposed Rayne Field lateral and Rayne compressor station." Accordingly the Rayne Field gas could not have been used to make any portion of the initial sales authorized in these proceedings. Since the sales proposed in the instant application are to be made from Texas Eastern's over-all system gas supply rather than the Rayne Field, the Examiner committed obvious error in attempting to grant Texas Eastern specific certificate authorization for the sale of gas from the Rayne Field which was neither requested nor required.

(b) Paragraph (A)(1) of the Commission's order of July 14, 1961, reopening these proceedings directs the Examiner to determine

> "Whether the public convenience and necessity require that the certificate issued in these proceedings by our order of June 23, 1959, and set aside by the Court of Appeals, be reissued in whole or in part."

As has been noted above the certificate issued in these proceedings by the Commission's order of June 23, 1959, authorized Texas Eastern "to construct and operate the facilities proposed in the applications filed in Docket Nos. G-12446 and G-12447 herein, as amended and modified; and to sell and deliver to existing customers the additional volumes of gas proposed in these proceedings in the maximum

amount of 101,660 Mcf per day." The Examiner's decision completely ignores the Commission's directive that a determination be made as to whether this certificate should be reissued in whole or in part. Instead the Examiner has elected to issue an entirely "*new* certificate of public convenience and necessity to Texas Eastern conditioned at an initial price of 18.5¢ per Mcf." (Par. 8 of Examiner's Findings and Conclusions). Apparently this "new certificate" would cover only "the sale of gas from the Rayne Field by Texas Eastern, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor." (Par. 4 of Examiner's Findings and Conclusions).

Texas Eastern, of course, has filed no application for the type of "new certificate" which the Examiner would issue and it is impossible to determine from the decision the point or points of delivery for the sale, the customer or customers to whom the sale would be made, the quantities of gas to

be sold and delivered, or the facilities Texas Eastern is authorized to construct and operate in order to make the sale. It is likewise impossible to determine what disposition the Examiner proposes to make of the $49,088,000 facilities and 101,660 Mcf per day sales heretofore authorized by the Commission's order of June 23, 1959.

We respectfully submit that the Examiner erred in thus ignoring the issues and realities of this case and in failing to decide that the certificate issued by the Commission's order of June 23, 1959, should be reissued in its entirety.

(c) The Examiner further erred in attempting to fix an initial price of 18.5¢ per Mcf for the Rayne Field gas. This proceeding does not involve any issue as to an initial price to be charged by Texas Eastern for the sale of gas

from the Rayne Field. As has been noted above, this proceeding involves an application filed by Texas Eastern under Section 7 of the Natural Gas Act to construct facilities and to make sales of additional quantities of natural gas under its firm rate schedules on file with the Commission. The application does not propose any separate sale of gas from the Rayne Field or any increase or change whatsoever in Texas Eastern's rate schedules or service agreements. The Rayne Field gas has been connected to Texas Eastern's system as a part of its over-all system gas supply since August 1959 and has been delivered to its customers as an inseparable rolled-in portion of its general gas deliveries under its approved effective rate schedules which can only be changed in accordance with the provisions of Sections 4 and 5 of the Natural Gas Act. Accordingly this proceeding under

Section 7 of the Natural Gas Act has never involved and could not legally involve any issue as to an initial price to be received by Texas Eastern for the sale of gas from the Rayne Field. Moreover, no issue relating to an initial price for the Rayne Field gas was set for hearing or determination by the Commission's order of June 14, 1961, reopening these proceedings. Quite the contrary, the issues set for hearing and determination relate to "the cost of the Rayne Field gas to Texas Eastern and its customers *over the productive life of the field*" and the costs associated with Rayne Field which Texas Eastern might be willing to agree to claim "in *future determinations* of the justness and reasonableness of its rates under *Sections 4 and 5* of the Natural Gas Act." (Order of June 14, 1961, Par. (A)(2), (4)). Clearly, therefore, the Examiner erred in ignoring these issues set for trial and determination by the Commission and in attempting to fix an initial

price for a nonexistent, unidentifiable sale of gas from the Rayne Field.

(d) The Examiner's findings and conclusions that Texas Eastern's sale of the Rayne Field gas should be conditioned at an initial or base price of 18.5¢ per Mcf are not supported by any substantial evidence of record in this proceeding, are wholly unrelated to the issues set for trial and determination by the Commission's order of June 14, 1961, and are confiscatory.

2

Texas Eastern excepts to the Examiner's findings and conclusions on Page 10 of his decision that Texas Eastern "by its market showing in the previous hearings herein dedicated this particular Rayne Field gas to out-of-

state markets for resale for ultimate public consumption" and on Page 14 of his decision that "the 'in line' price as of April 22, 1957 must be herein determined since that was the date on which the Rayne Field gas was dedicated to an interstate market by Texas Eastern," and as grounds for this exception respectfully shows the following:

(a) The Examiner's decision that an "in line" price must be determined as of April 22, 1957, is based upon the fallacious reasoning that when Texas Eastern filed its original application in this proceeding on April 22, 1957, it thereby dedicated the Rayne Field gas to an interstate market. (Decision, p. 14). This reasoning completely overlooks the fact that at the time Texas Eastern filed its certificate application on April 22, 1957, it owned no interest whatsoever in the Rayne Field reserves and therefore could not possibly have dedicated the gas to an interstate market. When such application was filed, Texas Eastern's

only rights with respect to the Rayne Field gas were represented by four executory gas purchase contracts dated February 1, 1957, between Texas Eastern, as buyer, and Continental, et al, as sellers, which contracts were expressly conditioned, *inter alia*, upon the sellers obtaining satisfactory certificates from the Commission authorizing their sale of the gas to Texas Eastern. The application filed by Texas Eastern did not even request authority to purchase the gas under the gas purchase contracts and, indeed, none was required since the Commission only had jurisdiction over the proposed sale by Continental, et al. Further, as is noted on Page 4 of the Examiner's decision, Continental, et al, terminated the gas purchase contracts with Texas Eastern and withdrew their

applications for certificates which had been consolidated for hearing with Texas Eastern's application of April 22, 1957. Clearly, therefore, there could have been no dedication by Texas Eastern of the Rayne Field gas on April 22, 1957, and if any dedication by any one ever occurred, it was certainly revoked when Continental, et al, cancelled the gas purchase contracts and withdrew their certificate applications.

(b) Texas Eastern's agreement to purchase the Rayne Field leases was not executed until December 4, 1958 (Ex. M-14) and the leases were not acquired by Texas Eastern until July 27, 1959. (R. 1831). In August 1959 Texas Eastern connected the Rayne Field gas to its interstate system and since that time the gas has been delivered to its customers as a part of Texas Eastern's system gas supply. However, the Rayne Field gas has never been dedicated by Texas Eastern to any particular sale or to its interstate market in the sense that an independent producer dedicates specific leases to the performance of a single contract with

a particular pipeline buyer. Indeed, it is well recognized that a pipeline company's reliance on leases which it owns as a part of its system gas supply in a Section 7 certificate application does not constitute a dedication of the leases. See *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company* (1949), 337 U.S. 498; *Northern Natural Gas Company* Opinion No. 230 issued June 24, 1952, 11 F.P.C. 174; *Northern Natural Gas Company* Opinion No. 230-A issued October 28, 1952, 11 F.P.C. 400; *Northern Natural Gas Company* Opinion No. 247 issued April 23, 1953, 12 F.P.C. 66; and *Panhandle Eastern Pipe Line Company* Opinion No. 269 issued April 15, 1954, 12 F.P.C. 53.

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(c) The Examiner's reasoning that Texas Eastern dedicated the Rayne Field gas to an interstate market on April 22, 1957, is completely refuted by the earlier portions of his own decision. For example, on Page 4 of the decision, the Examiner observes that by its Opinion No. 322 on June 23, 1959, in this proceeding, the Commission found that "The Rayne Field is one of the few large and fully developed gas reserves *not presently committed to and serving a market.*" (Emphasis in Examiner's decision). Further, on Page 8 of his decision, in correctly finding that the acquisition of the Rayne Field leases by Texas Eastern on July 27, 1959, was not subject to the jurisdiction of the Commission, the Examiner states that "the natural gas under the Rayne Field leases acquired by Texas Eastern *had not, at the time of the acquisition, been dedicated* to any sale in interstate commerce." (Emphasis supplied).

(d) The Commission did not instruct the Examiner to determine an in line price for the Rayne Field gas purchase contracts of February 1, 1957, which never became effective and which have long since been terminated and cancelled. Instead, the Commission's order reopening these proceed-

ings is specifically directed to designated issues concerning the cost of the Rayne Field lease acquisition which did not occur until July 27, 1959. The uncontradicted evidence establishes that the lease acquisition was accomplished at a price and under terms and provisions completely different from those

which prevailed under the cancelled gas purchase contracts.[1] In its order denying rehearing and clarifying its Opinion 351 in CATCO, the Commission recognized that in 1957 and 1958 "the situation changed substantially" from that which prevailed up to August 1956 when the CATCO contracts were executed. (Slip Op., p. 2). Obviously, therefore, the Examiner erred in failing to consider the evidence relating to the prices and conditions which prevailed at the time Texas Eastern acquired the Rayne Field leases and in placing complete reliance upon an opinion based on evidence not of record in this proceeding concerning a price period ending approximately *3 years prior* to the Rayne Field acquisition.

(e) The Commission's order of July 14, 1961, reopening these proceedings does not authorize the Examiner to attempt to determine an "in line *price*" for the Rayne Field gas as of April 22, 1957, or any other date or dates. On the contrary, the order clearly negates any possibility of an issue regarding an in line or initial price by expressly directing the Examiner to determine "whether the *cost* of the Rayne Field gas to Texas Eastern

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[1] In its order approving a general rate settlement proposal and terminating proceedings issued June 28, 1962, in The Ohio Oil Company, Docket Nos. RI60-92, et al, the Commission found that a renegotiated price of 20.2¢ per Mcf should be considered in the nature of an initial price where no sales had been made under the base contract until after the pricing provisions were renegotiated. In the same opinion the Commission further found that a sale under a permanent contract which superseded sales under a temporary contract between the same parties could be deemed in the nature of an initial rate.

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and its customers *over the productive life of the field* is out of line. The Examiner erred in ignoring this directive from the Commission and in attempting to decide a non-existent in line *price* issue having no application to or bearing upon the facts of the instant proceeding.

(f) The Examiner further erred in finding that if an in line price is not determined as of April 22, 1957, "then Texas Eastern might be enriched by the procedural delays herein." (Decision, p. 14). This observation by the Examiner displays a basic misunderstanding of the issues involved in this proceeding. It also serves to underscore the fallacy in the Examiner's approach of attempting to render a decision on the fictitious assumption that Texas Eastern is an independent producer making a sale of gas at the wellhead in the field to a pipeline buyer.

An application by an independent producer for a certificate under Section 7 of the Natural Gas Act always involves a sale under an entirely new rate schedule for a particular gas reserve. Accordingly the Commission is required to examine the proposed initial price under the new rate schedule to protect the public from the possibility that the independent producer may receive an unreasonably high initial rate. Unlike an independent producer application, the application in the instant case merely proposes increased sales under Texas Eastern's existing firm rate schedules. Thus, there is no possibility of an unreasonably high initial rate for the Rayne Field gas.

In addition there is no possibility of any future unjust enrichment to Texas Eastern by reason of its acquisition of the Rayne Field gas. If, as, and when Texas Eastern becomes involved in a future Section 4 or 5 rate pro-

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ceeding under the Natural Gas Act, it will only be entitled to a reasonable cost of service for the Rayne Field based

upon its reasonable and prudent investments and costs in the field. To deny it less would confiscate its property.

3

Texas Eastern excepts to the Examiner's findings and conclusions that the Commission's Opinion No. 351 issued January 22, 1962, involved "a matter very comparable to these proceedings" and to the Examiner's reliance upon said Opinion No. 351 as the basis for his decision herein, and as grounds for this exception respectfully shows the following:

(a) Opinion No. 351 in CATCO is concerned solely with the *initial* price to be received by independent producers for the sale of gas at off-shore platforms to a single pipeline purchaser under ordinary gas purchase contracts executed in August of 1956. In fixing the initial price to be received by the producers, the Commission did not concern itself with the cost of the gas to the pipeline purchaser or its customers either initially or over the productive life of the field. Clearly, therefore, if Opinion No. 351 in CATCO is at all applicable to the Rayne Field lease acquisition, it is applicable only with respect to the reasonableness of the price Texas Eastern paid Continental, et al, for the Rayne Field leases. The uncontroverted evidence establishes that this price expressed on a unit basis amounted to an average

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price of approximately 17.15¢ per Mcf at 14.73 psia [2] or

[2] The average unit price of 17.15¢ per Mcf was determined by dividing the total purchase price of $134,395,700 by the quantity of 793,498,800 Mcf representing the working interest share of Continental, et al, in the proved recoverable gas reserves underlying the leases. This price does not include any credit for the value of the liquids Texas Eastern will receive after the expiration of the production payment reserved by Continental, et al. If credit is given for the value of the liquids, the unit price, after all estimated costs of developing, operating, etc. over the life of the production, is reduced to 16.57¢ per Mcf at 14.73 psia. (Ex. X-4).

17.49¢ per Mcf at 15.025 psia. (R. 1355). Obviously this 17.49¢ per Mcf average price paid by Texas Eastern to Continental, et al, for the Rayne Field leases is not out of line even with the 18.5¢ per Mcf *initial* price, exclusive of taxes, which the Commission permitted the CATCO producers to receive under contracts dated approximately 3 years *prior* to the Rayne Field lease acquisition. The Examiner, however, apparently has not utilized the Commission's Opinion No. 351 in CATCO as a basis for determining the reasonableness of the price paid to the producers for the Rayne Field leases, but, instead, has attempted to use such opinion as a yardstick for measuring an initial or base price to be charged by Texas Eastern for the sale of gas from Rayne Field. Since Texas Eastern makes no separate or identifiable sale of gas from the Rayne Field, we are at a loss to understand exactly what the Examiner intended to accomplish by his finding of an initial price of 18.5¢ per Mcf, exclusive of taxes, for the Rayne Field gas. However, if the Examiner intended to thereby encompass or include any cost incurred by Texas Eastern in addition to the price paid to the sellers of the leases, he com-

mitted obvious error in placing reliance upon the Commission's Opinion No. 351 in CATCO dealing solely with the initial price to be received by producer sellers without regard to the cost of the gas to the pipeline purchaser and its customers over the life of the production.

(b) In its order reopening these proceedings the Commission directed the Examiner to determine "whether the cost of the Rayne Field gas to Texas Eastern and its customers *over the productive life of the field* is out of line." Accordingly the cost studies introduced in evidence in the reopened proceeding include all estimated costs to be incurred by Texas Eastern in developing, producing, gather-

ing, processing and delivering the Rayne Field gas into its system at high pressures over the entire life of the production from the field. Briefly, these cost studies showed the following:[3]

(1) The price paid by Texas Eastern for the sellers' working interest in the Rayne Field leases expressed on a unit basis is approximately 16.57¢ per Mcf at 14.73 psia or 16.90¢ per Mcf at 15.025 psia after taking into account all estimated costs of developing, gathering and delivering the gas over the entire life of the production and after

crediting Texas Eastern with the value of the separator liquids it is entitled to receive upon expiration of the production payment reserved by the sellers. (Ex. X-4).

(2) If royalty payments and Louisiana Severance Taxes at current levels are added to the abovementioned average unit price for the working interest gas, the resulting unit cost is 19.13¢ per Mcf at 14.73 psia or 19.44¢ per Mcf at 15.025 psia. (Ex. X-14).

(3) The addition of a 6% rate of return on Texas Eastern's net plant, plus Federal income taxes related to such return, results in an average unit cost of 20.95¢ per Mcf at 14.73 psia or 21.37¢ per Mcf at 15.025 psia. (Ex. X-17).

(4) The further addition of a 6% rate of return to Texas Eastern on its "other deferred debit account"

[3] All cost studies were introduced by Texas Eastern with the explanation that it is impossible to precisely predict the exact cost of producing the Rayne Field gas over the entire life of the production, because the cost will necessarily vary with different rates of production and over variables inherent in any gas production over the life of the leases. However, Texas Eastern has prepared all such cost studies on the basis of a rate of production which it considers to be reasonable.

and Federal income taxes related to such return results in an average unit cost of 23.86¢ per Mcf at 14.73 psia or 24.34¢ per Mcf at 15.025 psia. (Ex. X-18).

Obviously any attempted comparison of the estimated average cost to Texas Eastern of gathering, compressing and delivering the Rayne Field gas at high pressures into Texas Eastern's system over a period of 29 years with the *initial* price awarded to the CATCO producers is tantamount to a comparison of apples and oranges. In fact, if the Examiner had considered only one of the many costs which will be incurred by the pipeline purchaser

of the CATCO gas in addition to the initial price paid to the sellers, he would have found that the estimated *cost* of the Rayne Field gas to Texas Eastern and its customers *over the entire productive life of the field* is not out of line even with the *initial cost* of the CATCO gas to the purchaser and its customers. For example, the Commission found in its CATCO Opinion No. 351 that the pipeline purchasing the CATCO gas will incur a cost of approximately 4¢ per Mcf in transporting the gas from the offshore platforms to the shore of Louisiana.[4] When this gathering cost is added to the 20¢ per Mcf initial price awarded to the sellers for that portion of the gas produced from areas subject to the Louisiana State Severance Tax (Opinion

[4] In referring to this transportation cost, the Commission stated:

"Under its arrangements with the CATCO companies Tennessee carries the gas which it has purchased and the condensates owned by CATCO in its gathering lines from the offshore platforms to the shore of Louisiana. As to transporting it own gas, we see no reason why the cost of such transportation should not be borne by Tennessee, because it is Tennessee's custom to extend pipelines to the gas supplies. We think these transportation costs should be considered to be nearer the staff's 4 cents per Mcf based on a period closer to the test year than the examiner's 1.98 cents per Mcf based on developments extending to 1963." (Opinion, p. 15).

351, p. 17), it results in an initial cost of 24¢ per Mcf to the pipeline buyer and its customers for the CATCO gas on the Louisiana shore. Obviously even the highest estimated *average cost* of the Rayne Field gas to Texas Eastern and its customers at Opelousas, Louisiana, *over the entire life of the production* is not out of line with this *initial cost* of CATCO gas

to the purchaser on the shore of Louisiana at a time *3 years prior* to the Rayne Field lease acquisition. Further, as will be noted below, if the Examiner had given proper consideration to the many other elements of *cost* which the purchaser of the CATCO gas lease must bear over the life of the CATCO production, he would have inevitably found that the *cost* of the Rayne Field gas to Texas Eastern and its customers over the life of the production will be substantially less than the comparable *cost* of the CATCO gas.

(c) The Examiner's finding that the Commission's Opinion No. 351 in CATCO involves "a matter very comparable to these proceedings" completely ignores the many substantial variations and disparate provisions between Texas Eastern's Rayne Field lease acquisition and the CATCO contracts. His error in this respect is clearly revealed by the court's opinion in *United Gas Improvement Company* v. *Federal Power Commission* (9th C.A. 1960), 283 F. 2d 817, 823, cert. denied 265 U.S. 879, wherein the court stated:

> "Existing producer prices are relevant for comparative purposes only if they pertain to gas production in the same or an analogous area and if other principal features of the contracts are fairly comparable. Thus the contracts should be comparable from the standpoint of gas reserves and future potentials. The significance of any disparities existing as to these conditions should

be explained by Commission findings based upon substantial evidence. Substantial variation in the quality of gas sold should be similarly treated. The Commission followed this course in Transwestern Pipeline Co. et al., 22 F.P.C. 391. Disparate provisions relative to facilities to be provided and other services to be rendered should be given effect as well in determining the propriety of the analogy to rate under other existing contracts."

If the Examiner had followed the above quoted admonition of the Ninth Circuit Court of Appeals, he would have found that the many disparities between

the entirely different Rayne Field lease acquisition and CATCO contracts [5] include the following:

(1) The Texas Eastern exhibits showing the estimated cost of the Rayne Field leases include all costs of compressing and delivering the Rayne Field gas into Texas Eastern's system at a pressure of not less than 1000 psig throughout the life of the production. (Ex. X-14). The CATCO contracts, on the other hand, specifically provide that the sellers shall not be obligated to install or operate compression facilities in order to deliver the gas to the buyer. (CATCO Contracts, Section 8(a)). Moreover, the CATCO contracts obligate the buyer to reduce the operating pressure in its system at any delivery point down to a pressure of 700 psig in the event the flowing pressures of the sellers' wells decline to the extent that the contract

[5] Since the Examiner has relied almost entirely upon the Commission's Opinion 351 in CATCO as the basis for his decision in this proceeding, Texas Eastern requests the Commission to take judicial notice of the terms and provisions of the CATCO contracts which are on file with the Commission as Continental Oil Company Rate Schedule No. 154, The Atlantic Refining Company Rate Schedule No. 185, Cities Service Production Company Rate Schedule No. 6 and Tidewater Oil Company Rate Schedule No. 72.

quantity cannot be delivered to the buyer against the operating pressure in the buyer's system. (CATCO Contracts, Section 8(c)).

(2) In the event Texas Eastern should take a quantity of gas less than the note payments for the Rayne Field lease acquisition, Texas Eastern has an unlimited right to make up for the gas not taken over the entire pro-

ductive life of the field. (R. 1915). However, under the CATCO contracts the buyer is obligated to take or pay for a Daily Contract Quantity of gas equal to 1,000 Mcf for each 8,000,000 Mcf of recoverable gas originally in place in the dedicated reserves. (CATCO Contracts, Section 3 (a)). This Daily Contract Quantity *must be taken or paid for each and every day* during the term of the contract except during the calendar months of July, August and September when the buyer is permitted to reduce its takes by only 25%. (CATCO Contracts, Section 3(b)). In the event of such a reduction in takes, the buyer has only nine calendar months following the last month during which the reduction was in effect to make up for the aggregate volume which the buyer did not take. (CATCO Contracts, Section 3(c)). This is the only right of make up which the buyer has under the CATCO contracts. Except for such restricted and limited right of make up, any gas not taken on any day must be paid for and is irretrievably lost to the buyer. This is a far cry from Texas Eastern's right to take gas represented by the note payments in any amounts and at any time or times it chooses over the entire productive life of the field.

(3) By acquiring the Rayne Field leases, Texas Eastern obtained complete flexibility in takes and is privileged to completely shut in the field or to produce the wells on any day or days up to their maximum efficient rates of flow.

(R. 1915). Under the CATCO contracts the buyer is saddled with stringent daily minimums and at the maximum is entitled to take only the *smallest* of (a) a quantity equal to the maximum efficient rates of flow of the wells; or (b) the allowable rates of flow of the wells; or (c)

a quantity equal to 125% of the Daily Contract Quantity. (CATCO Contracts, Section 3(d)).

(4) The amount Texas Eastern is obligated to pay the sellers of the Rayne Field leases is fixed for all time (R. 1915) while under the CATCO contracts the price escalates at the rate of 1¢ per Mcf every 4 years. (CATCO Contracts, Section 10).

(5) The Rayne Field gas has a heating value ranging from 1,030 to 1,050 Btus per cubic foot after processing (R. 2302), whereas the CATCO producers are only obligated to deliver gas having a heating value of not less than 1,000 Btus per cubic foot. (CATCO Contracts, Section 7(a)).

Any fair and impartial comparison of the aforementioned restrictive terms and provisions of the CATCO contracts with the flexibility and freedom Texas Eastern achieves through the Rayne Field lease acquisition will readily reveal that the lease acquisition is far more advantageous to the purchaser and the ultimate gas consumers. Indeed if the additional costs of compression in later stages of production, possible price escalations, cost of gas paid for but not taken, restricted flexibility in takes, lower Btu content, transportation from a more remote area, etc. are added to the base *initial* cost of approximately 24¢ per Mcf for the CATCO gas on shore, it becomes crystal clear that under any estimate the average cost of the Rayne Field gas to Texas Eastern over the life of the production will be far less than that which will be incurred by the purchaser of the CATCO gas.

Texas Eastern excepts to the Examiner's findings and conclusions on Page 12 of his decision that the costs of the Rayne Field gas to Texas Eastern "are actually unimportant since the issue here depends upon the base price at which the public interest requires the Rayne Field gas from Texas Eastern," and as grounds for this exception would respectfully show the following:

(a) The Examiner's attempt to fix a base or initial price for the Rayne Field gas without regard to the cost of the gas to Texas Eastern is patently arbitrary, capricious and confiscatory. Clearly, the public interest does not require, and the Natural Gas Act does not permit, the establishment of a base price for pipeline-produced gas which does not allow the pipeline to recover its reasonable and prudent investment and costs. In the instant proceedings the undisputed substantial evidence establishes that the price paid by Texas Eastern for the Rayne Field leases was a reasonable and prudent investment by Texas Eastern's management in the light of the then existing circumstances. The Examiner has not made and could not in good conscience make any finding to the contrary. Accordingly the Examiner clearly erred in completely disregarding the issues and the evidence of Texas Eastern's costs and further erred in fixing an initial price for the sale of the Rayne Field gas solely on the basis of the Commission's Opinion No. 351 relating to a non-analogous sale by independent producers. In fact, even if Opinion No. 351 were applicable here, it certainly would not constitute authority for the Examiner's attempt to fix a confisca-

tory initial price for the Rayne Field gas without regard to Texas Eastern's reasonable and prudent costs. In Opinion

No. 351, the Commission expressly considered the costs of the independent producers and found that "an initial price of around 18½ cents would cover the CATCO costs, include an incentive for continued exploration and development either in the Cameron area or elsewhere, and would provide a margin for error on the disputed points, particularly in case the Cameron area reserves were not as great as found by the examiner." (Slip Op., p. 16).

(b) The Examiner's decision ignores the basic fact that this reopened proceeding involves only issues relating to the cost of pipeline-produced gas. Since there are no pending proceedings with respect to Texas Eastern's rates under either Section 4 or 5 of the Natural Gas Act, there can be no issue as to an initial price for the gas which has been connected to Texas Eastern's system for approximately 3 years. Moreover, even if an issue as to an initial price for the Rayne Field gas it could not be decided on the basis of the Commission's Opinion No. 351 fixing an in line price for a non-analogous sale by independent producers. In *City of Detroit, Michigan* v. *Federal Power Commission* (CADC 1955), 230 F. 2d 810, cert. den., 352 U.S. 829, the Court of Appeals made it quite clear that the Commission has no authority to price pipeline-produced gas for rate purposes solely on the basis of field prices, holding that the Commission was required to consider the conventional rate base method in its treatment of pipeline-produced gas for rate-making purposes at least as a point of departure. Clearly, therefore, the Examiner erred in attempting to fix an initial price for the Rayne Field gas

and further erred in attempting to establish such price without regard to Texas Eastern's reasonable and prudent costs and investments in the Rayne Field.

Texas Eastern excepts to the Examiner's findings and conclusions that the "evidence of prices being paid, and related information on sales, in South Louisiana for natural gas under long term contracts dated between January 1, 1958, and June 30, 1959" is "not applicable here," to the Examiner's failure to consider the issue of "whether the cost of the Rayne Field gas to Texas Eastern and its customers over the productive life of the field is out of line" and to the Examiner's further failure to find that such costs are not out of line, and would respectfully show the following:

(a) As has been noted above, the Commission's order of July 14, 1961, reopening these proceedings specifically directs the Examiner to determine:

> "Whether the cost of the Rayne Field gas to Texas Eastern and its customers over the productive life of the field is out of line."

Notwithstanding this specific Commission directive, the Examiner arbitrarily refused to consider either the issue or the voluminous evidence concerning it offered by Texas Eastern at the reopened proceeding. We respectfully submit that the Examiner thereby committed prejudicial error and that the Ex-

aminer further erred in failing to find and determine that the cost of the Rayne Field gas to Texas Eastern and its customers over the productive life of the field is not out of line on the basis of the following undisputed substantial evidence of record in these proceedings:

A. *The Examiner erred in failing to find that the cost of the Rayne Field gas to Texas Eastern and its customers is in line with the cost of existing gas supplies connected to Texas Eastern's system at field prices below uncontested prevailing area prices.*

Since the Commission's order reopening these proceedings does not set forth the standards to be followed in a determination of "whether the cost of the Rayne Field gas to Texas Eastern and its customers over the productive life of the field is out of line," Texas Eastern proved that such cost was "in line" under all of the approaches heretofore followed by the Commission in other cases.

In our opinion the many basic differences between the cost of pipeline-produced gas over the life of the leases and initial prices paid to sellers under ordinary gas purchase contracts make it impractical to attempt to utilize contract prices as a guide line. Moreover, the base price paid to a seller under a gas purchase contract in the field never represents all of the costs of the gas to the pipeline buyer and its customers.

For the foregoing reasons we believe the most practical approach to a determination of the issue of whether the cost of the Rayne Field gas *to Texas*

Eastern and its customers is out of line is a comparison of the cost of the Rayne Field gas with the cost *to Texas Eastern and its customers* of other gas connected to Texas Eastern's system at the time of the Rayne Field lease acquisition. A similar approach was utilized by the Commission in its Opinion No. 349 in *Tennessee Gas Transmission Company*, Docket Nos. G-20388, et al, wherein the Commission authorized Tennessee to construct facilities to make

a non-jurisdictional purchase of gas from Trans-Canada at a price of 37¢ per Mcf, stating:

> "Secondly, the examiner found that the proposed purchase price of 37 cents per Mcf in Canadian money had not been shown to be in the public interest. We disagree. We find the evidence shows that the price is 'in line' *with the cost of making southwest gas available in TBI's northern and New York rate zones.*" (Emphasis supplied). (Slip Op., p. 4).

In the instant case the uncontradicted evidence conclusively establishes that the cost of the Rayne Field gas to Texas Eastern and its customers over the productive life of the field is in line with the cost of making existing large blocks of gas on Texas Eastern's system available in the Rayne Field vicinity. Mr. Gordon Jennings, Supervisor of the Plans and Research Division of Texas Eastern's Engineering Department, introduced studies of the actual costs of making Pemex, South Texas and Wilcox Trend System gas presently connected to Texas Eastern's system available at Opelousas, Louisiana, where the Rayne Field gas enters the system. (R. 1860-1865). His studies establish that even though Texas Eastern is currently purchasing all of such other gas at prices far below the ceiling prices es-

tablished for such areas by the Commission's Statement of General Policy No. 61-6, the cost of making such gas available at Opelousas, Louisiana, in most instances exceeds even the highest estimate of the cost of the Rayne Field gas at the same point over the productive life of the field. Mr. Jennings' cost studies, computed on an Mcf basis at 15.025 psia, were as follows:

Location	Existing Contract Price	Transportation Cost	Total
Wilcox Trend System	14.04¢	9.06¢	24.0¢
South Texas*	15.6¢	9.1¢	24.7¢
Pemex (Texas-Mexico Border)	15.6¢	9.0¢	24.6¢

*An average transportation cost of 1.6¢ to 1.8¢ per Mcf per 100 miles was used, it being the average computed transportation cost of this case. (R. 1860, 1865).

In addition, Mr. Jennings made further estimates of the cost of making the Pemex and South Texas gas available on the basis of the average prices payable for the gas over the contract term. (R. 1862). The results of these computations are as follows:

Location	Average Price for the Term of Contract	Further Compression Costs	Transportation Costs	Total
Pemex	16.8¢	None	9.0¢	25.8¢
South Texas	16.7¢	0.33¢**	9.1¢	26.1¢

** An average cost of 1¢ per Mcf has been reduced to 0.33¢ per Mcf for the reason that only ⅓ of the reserves are estimated to be subject to this cost. (R. 1862).

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Obviously the Examiner erred in failing to consider the foregoing evidence and in failing to find that the public interest requires the continued attachment of the Rayne Field reserves to Texas Eastern's system at a stable cost to its customers in line with the cost of other existing gas supplies which have been connected to Texas Eastern's system for several years.

B. *The Examiner erred in failing to find that the cost of the Rayne Field gas to Texas Eastern and its customers is in line with the cost of Texas Eastern's other company-produced gas.*

The evidence establishes that the cost of the Rayne Field gas to Texas Eastern and its customers is below the cost

of making other Texas Eastern company-producer gas available in the Rayne Field vicinity. Mr. Osborn, Texas Eastern's Comptroller, testified that a study prepared under his direction in Texas Eastern's Docket Nos. G-12706 and G-18841 resulted in a unit cost of 44.34¢ per Mcf for its company-produced gas exclusive of the Rayne Field. (R. 1945). In these same dockets the Commission Staff developed a cost of 23.2781¢ per Mcf for such company-produced gas. (R. 1945). The foregoing costs represent only the cost of the gas in the field. The addition of gathering, compression and transportation costs from the wellhead to the Rayne Field vicinity, of course, would result in a cost far in excess of Rayne.

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C. *The Examiner erred in failing to find that the cost of the Rayne Field gas to Texas Eastern and its customers is in line with the cost to the consumers of comparative permanently certificated sales in South Louisiana.*

In addition to establishing that the cost of the Rayne Field gas is "in line" with the cost of other gas connected to its system, Texas Eastern proved that under any proper comparable basis the estimated cost of the Rayne Field gas is not out of line with previously uncontested, certificated sales to other pipelines in the South Louisiana area. For example, Mr. Furman of Foster Associates, Inc. prepared detailed statistics of final uncontested certificates authorizing prices at 20¢ per Mcf and above since 1954 when Commission regulation of producers began. (R. 1845, 1846). Mr. Furman's exhibits reveal that the Commission has finally approved initial prices of 20¢ per Mcf or higher for gas purchase contracts in South Louisiana dating as far back as 1952. (Ex. X-6, Schedule 9). In 28 instances final uncontested certificates for sales in South Louisiana have authorized *initial* base prices, plus tax re-

imbursement, ranging from 22¢ per Mcf to 24.05¢ per Mcf and 50 of the contracts shown on Mr. Furman's schedule of final uncontested certificates provide for average base prices ranging from 24.5¢ per Mcf to 28.35¢ per Mcf. (R. 1845).

It should be noted that practically all of the certificated sales shown on Mr. Furman's exhibits involve much smaller, less accessible reserves that the Rayne Field. Moreover, the prices shown thereon represent only the

base price, plus tax reimbursement, payable to the seller. Costs to the pipeline buyers of prepayments, take or pay obligations, gathering, compressing, treating and transporting the gas are not shown. Accordingly it is obvious that adjustments must be made if such contract prices are to be compared with the average cost of the Rayne Field gas to Texas Eastern and its customers over the productive life of the field. In fact, the relative superiority of the Rayne Field lease acquisition over a gas purchase contract has heretofore been recognized by the Commission in its Opinion No. 322 in this proceeding, wherein the Commission stated:

> "Furthermore, the price Texas Eastern will pay for the Rayne Field leases is fixed for all production from this field, and is not subject to the annual price escalations and indeterminate price increases provided for in the gas purchase contracts. • • •
>
> "The public will otherwise benefit from Texas Eastern's acquiring these leases instead of purchasing the gas under the producer sales contracts. For example, Texas Eastern will acquire control over the rate of production, and the minimum take or pay for provisions of the gas purchase contracts will be eliminated,

thereby increasing the flexibility of the company's overall pipeline operations. Further, since the purchase of the leases is not a contract to purchase gas, the price paid for the leases cannot have a disruptive effect on area prices by triggering favored nations or price redetermination clauses in Texas Eastern's or any other pipeline company's contracts. Other benefits also exist."[6]

In referring to some of the many advantages which the Rayne Field

lease acquisition offers over the usual type gas purchase contract, Mr. John Jacobs, Vice President in Charge of Texas Eastern's Gas Supply, pointed out that:

(1) The usual gas purchase contract gives the buyer only limited rights to take swings on the gas production, whereas ownership of the Rayne Field leases enables Texas Eastern to achieve complete flexibility in its takes from the field which have varied from O Mcf per day to as much as 181,679 Mcf per day.

(2) Gas purchase contracts normally contain take or pay for provisions with only a limited right of make up by the buyer, whereas by acquiring the Rayne Field leases, Texas Eastern has an unlimited make up right.

(3) The Rayne Field lease acquisition cost is fixed for all times while the initial base prices under gas purchase contracts are all subject to fixed price increases as well as indeterminate price increases through favored nation and price redetermination clauses; and

(4) The cost estimates of producing the Rayne Field gas include all costs of compression and gathering throughout

[6] 21 F.P.C. 860, 866.

the life of the production, while the gas reserves shown on Mr. Furman's exhibits are scattered throughout more remote areas of Southern Louisiana with the result that the buyers will incur considerable additional costs in gathering, compressing and transporting such gas to the Rayne Field vicinity. (R. 1915, 1921-1922).

The uncontroverted testimony of Mr. Jacobs establishes that when the foregoing and other advantages of the Rayne Field lease acquisition are

taken into account, gas purchase contract prices in the area should be adjusted upward by an amount ranging from 5¢ per Mcf to 10¢ per Mcf for comparative purposes. (R. 1915-1922).

The necessity of making adjustments of the type referred to by Mr. Jacobs for comparative purposes is well established by the opinions of the Commission and the courts. For example, the fact that credit must be given for the stability of the Rayne Field price and the absence of any possibility that the sellers may file for either fixed or indeterminate price increases during the entire life of the production is demonstrated by the Commission's opinion in *Trunkline Gas Company, et al*, Docket Nos. G-15394, et al, wherein the Commission certificated producer sales to Trunkline in Texas at an initial price of 20¢ per Mcf even though, with one possible exception, the highest prices theretofore certificated by the Commission in Texas were 17.5¢ and 18¢ per Mcf (21 F.P.C. 704, 715). In explaining its reasons for granting certificates at the higher price, the Commission stated (21 F.P.C. 704, 719):

> "These contracts are unique in several respects. In the first place they involve some of the largest volumes of gas yet committed to the interstate market from the

Texas Gulf Coast area. Secondly, and most important, these contracts provide for a firm 20 cent price for a period of ten years, without escalations or redeterminations. We look with favor on such firm contracts which serve to relieve the pressure on the rising spiral of producer prices caused by the usual provisions for escalations and redeterminations found in most contracts. We emphasize, however, that in the absence of this provision for a firm price, we would not be persuaded that the 20 cent price is required by the public convenience and necessity; and, it will not

be sufficient for producers hereafter seeking certificates to support their applications by reference to our action in this proceeding without taking proper account of this factor of firm price."

The further fact that additional credit must be given for the unusually large size of the approximately one trillion cubic feet of Rayne Field reserves and the ability of Texas Eastern to take unlimited swings on this ideally located reservoir is demonstrated by the Commission's opinion in *The Pure Oil Company*, Docket No. G-17930, 25 F.P.C. 383. In The Pure Oil Company case the Commission found that a price of 16¢ per Mcf paid by El Paso Natural Gas Company to West Texas Gathering Company was not "higher" than a price of 10.6¢ per Mcf paid to The Pure Oil Company when considered for comparative purposes, stating (25 F.P.C. 386):

"First, the examiner was of the view that, making the comparisons called for by the favored nation escalation provisions of the Pure contracts to determine whether the price for the West Texas sale was 'higher' than the Pure price, important differences in these

sales justified the finding that West Texas' price was not 'higher' than the Pure prices so that the Pure prices had not been triggered by the West Texas price. The principal such difference, according to the examiner, lay in the large average volumes and high pressures of gas available from the West Texas pipeline system, and the manner in which the wells supplying West Texas' system could be utilized in periods of peak demands to meet the heavy requirements from the El Paso system. * * * We conclude that the examiner was correct in finding that the West Texas price is not 'higher' than the Pure prices, within the meaning of the escalation provisions, and that accordingly there has been no escalation of the Pure prices. * * * Beyond any question, the qualities, including deliverability, that give the West Texas gas its premium importance to El Paso for peaking purposes are 'pertinent factors' which reasonably should

be considered in determining whether or not the price for the West Texas gas is 'higher' than the Pure prices. The record establishes that the gas El Paso purchases from West Texas does in fact have unusual properties of deliverability which, in conjunction with the location of the reserves, give it exceptional usefulness for peaking purposes in the operation of El Paso's pipeline system. These qualities, which liken this gas to gas from storage fields, sufficiently distinguish this purchase from the purchases of gas under the Pure contracts.''

In affirming the Commission's opinion in The Pure Oil Company case, the Court of Appeals for the Seventh Circuit stated:

"The record supports the Commission's conclusions regarding the exceptional physical characteristics of the West Texas gas supply. And, although the factor of location alone does not remove it from application of the favored-nation clauses, the desirable deliverability characteristics due to the extremely high pressure of the wells reasonably warrants the Commission's findings distinguishing the West Texas supply from Pure's gas and that its unefulness and exceptional value for peaking purposes required a conclusion that its price was not actually higher than Pure's on a comparative basis." (299 F. 2d 370).

In its Opinion No. 353 issued March 7, 1962, in *Michigan Wisconsin Pipe Line Company, et al,* Docket Nos. CP-61-102, et al, the Commission authorized the sellers to receive an initial price equal to the area ceiling plus prepayments in the amount of $4,014,928.17 with full recognition that the amount of the prepayments presumably would be included in the pipeline buyer's rate base as working capital and would "result in an additional cost to its jurisdictional customers." The Commission rationalized that the increased cost to the consumers was warranted because of the increased flexibility in

takes which the prepayments offered the pipeline, stating:

"In view of the proceedings in Docket No. RP60-9, and the conditions here imposed on the proposed initial prices, these cost figures are only rough approximations. Nevertheless, they are sufficient to show that the additional cost to Michigan Wisconsin's jurisdictional customers which may be expected by reason of the prepayments is not unreasonable in light of the benefits to be derived from Michigan Wisconsin's ac-

quisition of these reserves with the right to take the gas as it needs it to meet the Phillips drop-off." (Slip Op., p. 11).

In the instant proceeding the average unit price of approximately 17.49¢ per Mcf at 15.025 psia[7] paid to the sellers of the Rayne Field leases is clearly in line with uncontested permanently certificated contract prices in the area. The fact that Texas Eastern will be entitled to a reasonable return on its investment and its other deferred debit account which may be likened to a prepayment is likewise not unreasonable in the light of the many benefits which its customers will derive from the acquisition of the Rayne Field leases, particularly in view of the fact that the estimated cost of the gas to Texas Eastern's customers, including a reasonable return to Texas Eastern, will not be out of line with either the cost of existing supplies attached to Texas Eastern's system or the cost of any comparable substitute supply which might be attached to the system.

[Page 4183 is a duplicate of 4182, and is therefore omitted.]

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The evidence in this proceeding also establishes that gas sales at relatively long term stable prices or of large volumes command higher prices than those paid under the usual types of gas purchase contracts. For example, Chart 2 and Schedule 7 of Mr. Furman's Exhibit X-6 reveal that during the period from January 1, 1958, to June 30, 1959, sales of gas under contracts containing no provisions for indeterminate price increases commanded an average price (25.9¢ per Mcf) of 2.3¢ per Mcf more than the average price (23.6¢ per Mcf) received for sales under contracts containing indeterminate price clauses. (R. 1841). Chart 1 and Schedule 6 of such Exhibit X-6 also establish that during

[7] This price is reduced to 16.9¢ per Mcf after all estimated expense if credit is given for the value of the liquids retained by Texas Eastern.

the same period the average base price for small volume purchases was 21.5¢ per Mcf, whereas the average base price in the so-called "large volume class" was 24.3¢ per Mcf. (R. 1839-1841).

D. *The Examiner erred in failing to find that the cost of the Rayne Field gas to Texas Eastern and its customers is in line with the price paid for non-jurisdictional purchases of gas in more remote areas of Texas and Louisiana.*

Any determination of whether the Rayne Field lease acquisition cost is "out of line" on the basis of gas purchase contract prices must necessarily include a consideration of prices paid for non-jurisdictional purchases of gas. These non-jurisdictional purchases have as great, if not greater, impact upon the pateau of gas prices than jurisdictional purchases.

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In the instant case the undisputed evidence conclusively establishes that the acquisition cost of the Rayne Field leases is considerably less than prices paid for non-jurisdictional purchases of gas located in more remote areas of Texas and Louisiana. As an example, Mr. Jacobs referred to a gas purchase made by the Texas Electric Power Company from the Old Ocean Field in Brazoria County, Texas, for intrastate consumption at an initial price of 21.5¢ per Mcf with fixed price escalations of 2¢ per Mcf each 4 year period for an average non-regulated price of 26.5¢ per Mcf. He noted that this contract also provided for a Btu price adjustment clause, plus tax reimbursement, to the seller for 100% of any additional taxes. (R. 1916, 1917). In addition, Mr. Jacobs referred to a non-jurisdictional contract of United Gas Pipe Line Company covering the East Bastian Bay Field at a base initial price of 22.5¢ per

Mcf, plus 100% tax reimbursement, for a total initial price of 24.8¢ per Mcf. This price escalates to 27.3¢ per Mcf on July 1, 1962, with provisions for price redeterminations at the end of the 10th and 15th years of the 20 year contract term on the basis of the average of the two highest prices then being paid in South Louisiana. (R. 1918). Mr. Jacobs testified that an upward adjustment of 4¢ per Mcf for the non-jurisdictional Old Ocean Field purchase and an adjustment from 3¢ to 6¢ per Mcf to the non-jurisdictional East Bastian Bay Field purchase should be made to cover transportation costs of these reserves to the Rayne Field vicinity for comparative purposes. (R. 1919). He also pointed out that an additional upward adjustment in the amount of approximately 5¢ per Mcf should be made to such gas purchase contracts for the reasons heretofore set forth

with respect to jurisdictional sales. (R. 1919). We submit that the Examiner committed obvious error in completely ignoring the evidence as to these non-jurisdictional sales.

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Texas Eastern excepts to the Examiner's failure to pass upon the issue of "whether Texas Eastern's proposal is in the public interest even if the cost of the gas to Texas Eastern and its customers proves to be out of line" and to the Examiner's failure to find that Texas Eastern's proposal is in the public interest regardless of whether or not the cost of the gas to Texas Eastern and its customers proves to be out of line, and would respectfully show the following:

Having ignored the Commission's order of July 14, 1961, to determine "whether the cost of the Rayne Field gas to Texas Eastern and its customers over the productive life of the field is out of line," the Examiner further neglected

to comply with the further order of the Commission to determine:

> "Whether Texas Eastern's proposal is in the public interest even if the cost of the gas to Texas Eastern and its customers proves to be out of line."

The question of whether Texas Eastern's acquisition of the Rayne Field leases is in the public interest even if the cost is out of line must, of course, be determined in the light of the circumstances existing at the time of the lease acquisition on July 27, 1959. The undisputed evidence es-

tablishes that the Rayne Field, consisting of approximately one trillion cubic feet of gas, was acquired by Texas Eastern in good faith in order to enable it to better serve the then existing and anticipated future requirements of its customers.

There can be no question that it is in the public interest for Texas Eastern to continually augment its system gas supplies in order to satisfy the ever-increasing urgent requirements of the market area it serves. It is also conclusively established by the evidence in this proceeding that under any reasonable cost estimate Texas Eastern will be able to deliver the Rayne Field gas at a cost to its customers far less than the cost which would be incurred in delivering any comparable quantity of gas available to Texas Eastern's system on July 27, 1959, or today. Moreover, as has been noted above, the evidence establishes that the estimated cost of the Rayne Field gas to Texas Eastern and its customers over the entire productive life of the field is in line with present costs to Texas Eastern and its customers of existing gas supplies connected to Texas Eastern's system.

The Examiner obviously erred in failing to consider the foregoing and other evidence which conclusively establishes that the Rayne Field lease acquisition is in the public interest and in failing to find the following:

A. *The evidence establishes that the Rayne Field lease acquisition enabled Texas Eastern and its customers to avoid an annual favored nation increase under existing contracts of approximately $10,000,000.*

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It is common knowledge that for many years Texas Eastern has carried on a vigorous and positive program of "holding the line" on the field cost of gas under its existing contracts as well as for its new supplies. The avoidance of favored nation triggering is of peculiar and particular importance to Texas Eastern and its customers because several of its older contracts contain favored nation clauses which would be triggered by a higher Texas Eastern contract price for gas located anywhere within the States of Texas and Louisiana. (R. 1909). Thus any favored nation triggering would result in a relatively larger dollar impact on Texas Eastern's cost of service than would be experienced by most of the other pipelines. (R. 1909).

In order to avoid favored nation triggering, Texas Eastern in the past has followed the practice of extending its system to new areas to satisfy its customers' requirements when the required additional gas supplies could no longer be obtained along its existing system at its prevailing gas prices. (R. 1909). Thus in 1953, Texas Eastern constructed its Wilcox Trend gathering system in Texas Railroad Commission District No. 2, and in 1957 it constructed its South Texas extension along the Gulf Coast in Texas Railroad Commission District No. 4 to a point of connection with Pemex at the Mexican boundary in Hidalgo County,

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Texas. In each instance these new extensions enabled Texas Eastern to acquire new gas supplies at prices in line with the prevailing prices of its then existing gas supplies, with the result that the new acquisitions had little or no triggering effect on the favored nation clauses of its existing contracts. (R. 1915).

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During the time Texas Eastern was extending its system to these more remote areas in Texas, it had refrained from purchasing gas in the prolific gas producing South Louisiana area in order to avoid the favored nation triggering which would have resulted from a purchase at the prevailing price in that area. (R. 1906). However, the time came when Southern Louisiana offered the only large gas reserves available to Texas Eastern's system, and the price being paid and offered for much smaller scattered reserves along its system in Texas was rapidly approaching the prevailing price in Southern Louisiana. (R. 1905, 1906). Accordingly, the purchase of additional gas in Texas would has had almost as drastic a favored nation triggering effect on Texas Eastern's existing contracts as the purchase of gas in Southern Louisiana. (R. 1905).

Texas Eastern, therefore, had no choice except to enter the Southern Louisiana gas market in order to obtain a supply of gas to meet the admittedly urgent needs of its customers. Accordingly, on February 1, 1957, Texas Eastern executed the usual type of gas purchase contracts for the purchase of gas from the large reserves in the Rayne Field, Acadia Parish, Louisiana, at an initial base price of 22.6¢ per Mcf, plus tax reimbursement in the amount of 2.175¢ per Mcf on the basis of present Louisiana taxes. The price escalated at the rate of 0.4¢ per Mcf each year for an average price, plus tax reimbursement of 28.775¢ per Mcf. (R. 1904). It was shown that the purchase of gas at the

initial contract price could result in a favored nation triggering of Texas Eastern's existing contracts in an amount of approximately $10,000,000 per annum. (R. 1904). Although the initial hear-

ing in these proceedings resulted in a favorable decision from the Examiner, exceptions were filed by a number of Texas Eastern's customers principally upon the ground that the favored nation triggering would be contrary to the public interest. (R. 1906). In the light of these complaints from its customers, Texas Eastern redoubled the efforts it had previously instituted to acquire the Rayne Field leases and thus avoid any favored nation triggering. (R. 1907).

We wish to emphasize that Texas Eastern's negotiations for the purchase of the Rayne Field leases were not prompted by any desire to avoid the jurisdiction of the Commission. Instead, the negitations were conducted because of a sincere belief on the part of Texas Eastern's management that the lease acquisition would be far more advantageous to Texas Eastern and its customers than the purchase of the Rayne Field gas under gas purchase contracts. Moreover, Texas Eastern had been unsuccessful in repeated attempts to contract for additional gas in Southern Louisiana at its then existing system prices, and the lease purchase constituted the only method known to Texas Eastern whereby it could obtain a supply of gas to satisfy its customers' admittedly urgent requirements without triggering favored nation clauses.

The evidence reveals that after many months of continuous negotiations with the producers, Texas Eastern finally arrived at the lease acquisition arrangement which is the subject of this proceeding. (R. 1907). As is noted in the Commission's opinion herein of June 23, 1959, all

of Texas Eastern's customers who had objected to the gas purchase contracts withdrew their ob-

jections in the light of the lease acquisition arrangement so that the lease purchase was opposed only by the New York Public Service Commission. (21 F.P.C. 860).

Following the issuance of the Commission's opinion of June 23, 1959, Texas Eastern on July 27, 1959, consummated the purchase of the Rayne Field leases. As had been predicted in the Commission's Opinion No. 322, the lease acquisition did not have any "disruptive effect on area prices by triggering favored nation or price redetermination clauses in Texas Eastern's or any other pipeline company's contracts." (21 F.P.C. 860, 867). This avoidance of favored nation triggering has enabled Texas Eastern to continue to "hold the line" on its existing gas purchase contract prices, and, in addition, to inaugurate a program of settling its independent producer-supplier rate cases in a manner designed to eliminate all favored nation and other indeterminate pricing clauses from the underlying gas purchase contracts. (R. 1911). This program instituted by Texas Eastern has been sanctioned and implemented by the Commission's Second Amendment to its Statement of General Policy No. 61-1 issued December 20, 1960.

It is submitted that aside from the many other advantages realized by Texas Eastern and its customers from the Rayne Field lease acquisition, the avoidance of favored nation triggering alone, in Texas Eastern's case, clearly establishes that the lease purchase was required by the public convenience and necessity. Such lease purchase represented the only manner in which Texas Eastern could obtain an additional supply of gas to meet its customers' urgent requirements, and, at the same time, hold the line on its

existing prices. The advantages which Texas Eastern, it customers and the public have already realized and will continue to realize in the future by the maintenance of a stable gas purchase price structure on Texas Eastern's system are self-evident. The Examiner erred in failing to consider the evidence concerning these matters.

B. *The evidence establishes that the cost of the Rayne Field gas to Texas Eastern and its customers is far below the cost which would be incurred in connecting a comparable new gas supply to Texas Eastern's system at in line gas purchase contract prices.*

In addition to being in line with the cost of other existing gas supplies on Texas Eastern's system, the cost of the Rayne Field gas is far below the cost which would be incurred in connecting a comparable new gas supply to Texas Eastern's system at in line gas purchase contract prices.

Mr. Jacobs' testimony establishes that at the time of the Rayne Field lease acquisition there were no easily accessible gas reserves on the market in Texas Eastern's gas supply area of a size comparable to the Rayne Field reserves, and that if Texas Eastern should be required to disconnect the Rayne Field from its system, it would require several years to replace such reserves with a comparable quantity of gas. (R. 1923). He further pointed out that in order to obtain a comparable quantity of gas, Texas Eastern would have to attempt to negotiate a large number of gas purchase contract for much smaller gas reserves scattered along its system and that

at the time Texas Eastern acquired the Rayne Field leases, the initial field price for these reserves in the field would

be in the range of 20¢ per Mcf in Texas to 24¢ per Mcf in Southern Louisiana. (R. 1924). His opinion in this respect is further substantiated by the testimony of Mr. Furman that for the period January 1, 1958, through June 30, 1959, the median initial base price, plus tax reimbursement, during such period of time was 25.9¢ per Mcf. (R. 1842). Mr. Furman pointed out that these price ranges for Southern Louisiana purchases have continued to prevail in the area subsequent to June 30, 1959. (R. 1842, 1843).

It is an irrefutable economic fact that Texas Eastern cannot acquire gas supplies under gas purchase contracts at prices less than the prices being paid and offered by its competitors in the same area. However, even if it is assumed, *arguendo*, that Texas Eastern could have acquired a supply of gas of a size comparable to the Ryne Field at the area prices subsequently set by the Commission's Statement of General Policy No. 61-1, it is nevertheless conclusively established by the evidence that, when transported to the Ryne Field vicinity, such gas would cost Texas Eastern and its customers a substantial amount in excess of the cost of producing the Rayne leases. For example, Mr. Jennings testified that he had made engineering design and cost studies to determin the cost of gathering and transporting to Opelousas, Louisiana, several different block of gas which Texas Eastern had considered purchasing in the past. Utilizing the then existing area price of 18¢ per Mcf authorized by the Commission for Texas Railroad Commission Districts Nos. 2, 3 and 4, Mr. Jennings pointed out

that the equivalent cost to Texas Eastern at Opelousas, Louisiana, for reserves located in Jim Hogg County, Texas, would be 28.02¢ per Mcf and for reserves located in Duval County, Texas, 31.68¢ per Mcf. (R. 1863). His testimony also shows that the purchase of gas in the Ship Shoal area

offshore of Southern Louisiana at the existing area price of 19.5¢ per Mcf would result in a cost of the gas to Texas Eastern at Opelousas of 27.27¢ per Mcf. (R. 1871). Mr. Jacobs testified that the initial cost of purchasing new gas supplies to substitute for the Rayne Field reserves, plus transportation costs to the Rayne Field vicinity, would exceed the average unit cost of the Rayne Field gas in an amount ranging from 5¢ to 10¢ per Mcf. (R. 1893).

It must be remembered that the aforementioned additional initial costs of acquiring new gas supplies are based solely upon a computation of the costs Texas Eastern would incur in gathering, compressing and transporting such gas to the Rayne Field vicinity. If favored nation triggering, resulting from the acquisition of such new supplies, is also taken into account, it is obvious that such new supplies would *exceed* the cost of the Rayne Field gas by an amount not less than 25¢ per Mcf. (R. 1893).[8]

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C. *The advantages which Texas Eastern and its customers realize from the Rayne Field lease acquisition, as distinguished from purchases under gas purchase contracts, are in the public interest.*

In addition to the fact that the acquisition of the Rayne Field leases enabled Texas Eastern to avoid favored nation triggering of existing contracts in an amount of approximately $10,000,000 per year and to acquire one of the most desirable gas reserves in Southern Louisiana at a cost in line with the cost of its existing gas supplies transported to the Rayne Field vicinity and far less than the cost which would be incurred in connecting a comparable new gas sup-

[8] Mr. Jacobs' testimony shows that the estimated favored nation triggering in the amount of $10,000,000 per year is the equivalent of approximately 20¢ per Mcf on the estimated annual take from Rayne Field of 51.1 billion cubic feet of gas. (R. 1904).

ply, the lease acquisition affords Texas Eastern and its customers other advantages which could not be achieved under the usual type gas purchase contract.

The evidence establishes that the acquisition and complete ownership by Texas Eastern of the Rayne Field reserves, approximating one trillion cubic gas of proved recoverable pipeline gas, will be of great value to Texas Eastern and its customers in the operation of Texas Eastern's system. As has been noted above, since Texas Eastern has acquired the Rayne Field, its takes from the field have varied from 0 Mcf per day to as much as 181,679 Mcf per day. This wide range in deliverability, of course, is of great importance in operating Texas Eastern's pipeline system to meet the demands of its consumers, especially when it is remembered that a great many existing Southern Louisiana gas purchase contracts only allow the pipelines a plus or minus 20% variation in their takes. (R. 1895).

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For example, during times of peak sales' demand in the market area, freezing storms are frequently also experienced in the Gulf Coast supply area with the consequence that small fields may be frozen off from the line. Under such circumstances, Texas Eastern is in a position to take large quantities of gas from the Rayne Field, which would not be possible under the restricted take provisions of gas purchase contracts, to offset the loss in supply due to the freezing off of small wells and thus obviate the necessity of curtailing deliveries to the consumers. (R. 1895). Further, as is customary in the Gulf Coast supply area, many of Texas Eastern's contracts contain so-called "take or pay for" provisions which obligate it to either take or pay for a minimum quantity of gas each year whether taken or not. The ability to reduce takes from the Rayne Field during periods of off-peak demand in amounts not possible

under the usual type gas purchase contract has been and will be of great benefit to Texas Eastern in balancing the over-all operation of its pipeline system to avoid or minimize obligations to pay for gas not taken under its gas purchase contracts.[9] (R. 1896). These advantages are greatly en-

hanced by the very large size of the Rayne Field reserve and its ideal location on Texasu Eastern's system from an operational standpoint. (R. 1896).

The foregoing and other advantages to a pipeline of owning substantial gas reserves have been recognized by the Commission in the instant case (21 F.P.C. 860) and in *Panhandle Eastern Pipe Line Company, et al.*, Docket Nos. G-1116, et al., 13 F.P.C. 54, 74, wherein the Commission stated.

> "Finally, as we see it, the interest of the public definitely lies in the direction of natural-gas production by pipeline systems themselves, as distinguished from their complete dependence for gas supply upon purchases from other producers. There are several reasons why, in our judgment, it is very much in the interest of pipelines, and of the public served by them, that such systems produce themselves a sub-

[9] Although it is impossible to predict the exact amount Texas Eastern's customers will benefit in dollars by its ability to avoid take or pay for obligations under its gas purchase contracts through its ownership of the Rayne Field leases, it is safe to say that such benefits will be substantial. For example, Transcontinental Gas Pipe Line Corporation estimates that by 1965 it will have paid approximately $45,000,000 for gas not taken. *Transcontinental Gas Pipe Line Corporation*, Docket No. RP61-13, Tr. 525, 529-31, 563-65. United Gas Pipe Line Company recently disclosed that it has paid approximately $7,900,000 for gas not taken and that the make up period for much of this gas has expired. *Texas Eastern Transmission Corporation, et al*, Docket Nos. CP60-122, et al, Tr. 2582-83. Other pipelines are experiencing similar take or pay problems, but, as of this date, Texas Eastern has none.

stantial portion of the natural gas which they transport and sell. In the first place, such production strengthens their bargaining position in negotiating gas purchase contracts with independent producers. While this record does not contain the data which would be necessary to permit specific comparisons on this score, we are convinced that companies not wholly dependent upon arm's length purchases for their entire supplies are generally able to buy gas more advantageously. This advantage must ultimately redound to the benefit of their customers through lower gas-purchase prices and cost of service than would otherwise obtain. Secondly, by utilizing their own production to take the swings of pipeline—throughout in response to seasonal and other fluctuations of consumer demand, such pipeline systems are able to take their purchased gas at relatively uniform volumes and high load factors which, under the usual provisions of gas-purchase contracts having minimum take clauses, likewise ordinarily results in lower purchased-gas and service costs, with concomitant rate advantages to their customers. And thirdly, it seems too obvious to require demonstration that it is much more in the interest of consumers in interstate markets remote from the major areas of natural-gas production that the pipeline serving them continue to control supplies ade-

quate to give them service reasonably adequate to meet their needs, than that low rates be available to them on paper or in theory without the gas supply being actually present for purchase by them thereunder."

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Texas Eastern excepts to the Examiner's failure to find that the public convenience and necessity requires that

service from the Rayne Field facilities be continued in the future as it has in the past.

In Paragraph (A)(4) of its order issued July 14, 1961, the Commission set forth the following issue.

> "If Texas Eastern's lease acquistion is not in the public interest by reason of the cost of the Rayne Field gas, whether Texas Eastern should be ordered to cease and desist from operating the 'Rayne Field facilities' or as a possible alternative, whether Texas Eastern will agree that in future determinations of the justness and reasonableness of its rates under Sections 4 and 5 of the Natural Gas Act it will not claim actual costs associated with Rayne Field gas if the reasonable area price is lower than actual cost."

For the reasons set forth above, Texas Eastern's acquisition of the Rayne Field leases is clearly in the public interest. Particularly when viewed in the light of the peculiar facts and circumstances which existed on Texas Eastern's system at the time of the Rayne Field lease acquistion, it is crystal clear that the lease purchase represented the mast reasonable and prudent manner in which Texas Eastern could obtain urgently needed additional gas supplies at the lowest possible cost to its customers while holding the line on the cost of its existing gas supplies by the avoidance of favored nation triggering in the possible amount of approximately $10,000,000 per annum.

In view of the fact that the public interest obviously requires continuation of service from the Rayne Field, no decision is necessary upon the Commission's alternative issue of "whether Texas Eastern will agree that in future determinations of the justness and reasonableness of its rates under Sections 4 and 5 of the Natural Gas Act it will

not claim actual costs associated with Rayne Field gas if the reasonable area price is lower than actual cost." However, Texas Eastern wishes to make it clear that it would be unwilling to play such a game of "heads you win, tails I lose."

In the first place the uncontradicted substantial evidence conclusively establishes that the Rayne Field lease acquisition was a reasonable and prudent investment on the part of Texas Eastern's management in the best interests of its customers. Accordingly there could be no legal justification for depriving Texas Eastern of any portion of its actual reasonable and prudent costs associated with Rayne Field gas in future terminations of its rates.

Secondly, the Rayne Field leases were acquired in good faith on July 27, 1959, approximately 14 months *prior* to the promulgation of the first of the Commission's area price orders.[10] Any condition now imposed upon Texas Eastern limiting it to *the lesser* of its actual costs associated with Rayne or the reasonable area price would clearly be confiscatory.

Finally, and of equal importance, this proceeding deals with the

cost of pipeline-produced gas to the customers, including all costs of developing, gathering, compressing and delivering the gas at high pressures over the life of the leases. The Commission's area price orders, on the other hand, relate only to initial prices to be received by independent producers and have no relation whatsoever to the costs pipelines may claim for their own company-produced gas. Moreover, since area prices do not include additional costs

[10] The Commission's Statement of General Policy No. 61-1 was issued September 28, 1960.

incurred by the pipelines and borne by the consumers for compression, gathering, treating, transportation, prepayments, take or pay, etc., they are in no way comparable to the estimates of record in this proceeding concerning the cost of the Rayne Field gas to Texas Eastern and its customers over the productive life of the field which include such additional costs. In fact, the only cost estimates of record herein which are in any way comparable to area prices are those estimates confined to the average unit price paid by Texas Eastern to the sellers of the Rayne Field leases, ranging from 16.9¢ per Mcf Ex. X-4) to 17.49¢ per Mcf (R. 1355) at 15.025 psia. It is undisputed that such prices are far below "in line" or area prices.

FINDINGS AND CONCLUSIONS REQUESTED BY TEXAS EASTERN

In addition to the findings and conclusions set forth in the Commission's order issued herein on June 23, 1959, Texas Eastern proposes the following findings and conclusions in lieu of the findings and conclusions in the Examiner's decision:

(1) The evidence introduced by Texas Eastern at the reopened pro-

ceeding establishes that the acquisition costs of the Rayne Field leases are and will be consistent with the public convenience and necessity.

(2) Texas Eastern's estimates that the Rayne Field leases cover an original proved recoverable gas reserve of approximately 988,771,000 Mcf of pipeline gas appear to be proper and reasonable. Upon the basis of these estimates the Commission finds that the consideration paid and to be paid for the Rayne Field leases will result in an average unit price of approximately 17.49¢ per Mcf at 15.025 psia for the working interest gas owned by the

sellers of the leases. If credit is given for the value of the separator liquids Texas Eastern is entitled to receive from the gas, the unit price paid for the working interest in the leases is approximately 16.9¢ per Mcf at 15.025 psia after all estimated costs of developing, operating, gathering and delivering the gas over the life of the production. These estimated unit prices are substantially less than uncontested permanently certificated initial gas purchase contract prices prevailing in the area at the time of Texas Eastern's acquisition of the Rayne Field leases.

(3) The substantial evidence introduced at the reopened proceedings herein establishes that the cost of the Rayne Field gas to Texas Eastern and its customers over the productive life of the field is not out of line. Although it is impossible to precisely predict the exact cost of producing the Rayne Field gas over the life of the leases, the cost estimates presented by Texas Eastern are reasonable and establish that the cost of the Rayne Field gas is "in line" with the cost of making other large blocks of gas connected to Texas Eastern's system at the time of the Rayne Field lease acquisition

available in the vicinity of the Rayne Field. It also established that the estimated cost of the Rayne Field gas to Texas Eastern and its customers is less than the cost which would be incurred in making any comparable gas supply available in the vicinity of the Rayne Field at "in line" field prices prevailing in the area at the time of the Rayne Field lease acquisition.

(4) The evidence further establishes that the acquisition of the Rayne Field leases was in the public interest even if the cost of the gas to Texas Eastern and its customers should prove to be out of line. Due to the peculiar facts and circumstances existing on Texas Eastern's sys-

tem at the time of the Rayne Field lease acquisition, the lease purchase represented the most reasonable and prudent manner in which Texas Eastern's management could obtain additional gas supplies to meet the requirements of its customers without triggering favored nation clauses under Texas Eastern's existing gas purchase contracts in an estimated amount of approximately $10,000,000 per annum. In addition to contributing to the continuation of a stable gas purchase price structure on Texas Eastern's system without additional costs to its customers, the Rayne Field lease acquisition also benefited Texas Eastern's customers by providing increased flexibility in Texas Eastern's operations, thus enabling it to better serve its customers' requirements and at the same time reduce the possibility of incurring take or pay obligations under its gas purchase contracts.

(5) The Rayne Field leases have been connected to Texas Eastern's system for over 3 years. Actual operations during this period have demon-

strated that the lease acquisition had no disruptive effect on area prices by triggering favored nation or price redetermination clauses in Texas Eastern's or any other pipeline company's contracts. On the contrary, Texas-Eastern's acquisition and operation of the Rayne Field leases has enabled it to "hold the line" on cost of its gas supplies and to maintain stability in its rates and services to its customers.

(6) Disconnection of the Rayne Field from Texas Eastern's system would seriously impair its ability to maintain adequate service to its customers and the public convenience and necessity requires that service be continued from the Rayne Field in the future as it has in the past.

(7) The construction and operation by Texas Eastern of the facilities and the rendition of the sales referred to in the Commission's order issued herein on June 23, 1959, is required by the public convenience and the certificate of public convenience and necessity therefor heretofore issued by the Commission's order herein of June 23, 1959, should be reissued in its entirety.

FORM OF ORDER REQUESTED BY TEXAS EASTERN

Texas Eastern proposes the following form of order in lieu of the order proposed by the Presiding Examiner:

(A) The certificate of public convenience and necessity heretofore issued to Texas Eastern Transmission Corporation by the Commission's order herein of June 23, 1959, is hereby reissued in its entirety.

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Motion for Oral Argument

For reasons set forth hereinabove, Texas Eastern respectfully requests the Commission to schedule oral argument on the matters involved in this proceeding, and that Texas Eastern be granted the opportunity to present oral argument before the Commission in support of the foregoing exceptions.

Respectfully submitted,

TEXAS EASTERN TRANSMISSION CORPORATION

By W. D. DEAKINS, JR.
W. D. Deakins, Jr.
Its Attorney

Of Counsel:

JACK D. HEAD, General Counsel
Texas Eastern Transmission Corporation
P. O. Box 2521
Houston 1, Texas

KEITH M. PYBURN, Esquire
Texas Eastern Transmission Corporation
Suite 852, Pennsylvania Building
Washington 4, D. C.

JOSEPH F. WEILER, Esquire
Texas Eastern Transmission Corporation
P. O. Box 2521
Houston 1, Texas

MR. MARTIN L. FRIEDMAN
Chapman, Wolfsohn & Friedman
932 Pennsylvania Building
Washington 4, D. C.

4219

BEFORE THE FEDERAL POWER COMMISSION

	Docket Numbers
Texas Eastern Transmission Corporation	G-12446 and G-12447
Continental Oil Company	G-12432

Exceptions of Commission Staff to Initial Decision of the Presiding Examiner

Now comes Commission Staff Counsel, pursuant to Section 1.31 of the Commission's Rules of Practice and Procedure, and submits the following exceptions to the Presiding Examiner's decision issued June 29, 1962, in the above-entitled proceeding.[1]

I

INTRODUCTORY STATEMENT

There have now been issued examiners' initial decisions in two proceedings involving so-called developed leasehold acquisitions by pipelines. The first decision was issued January 8, 1962, in *Tennessee Gas*

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Transmission Company et al. (MCN), Docket Nos. G-14562, *et al.*[2] The second decision, Rayne Field, is the

[1] The time for filing exceptions was extended by Commission Notices of July 16, 1962, and August 30, 1962, upon motions made by Texas Eastern Transmission Corporation.

[2] Subsequent to the issuance of the MCN decision, the Commission accepted the applicants' amended filings to their respective applications, materially changing the manner in which the gas was proposed to be acquired from the producers. This obviated the necessity of having the Commission pass upon the matters disposed of by the examiner in that decision and the applications as amended were set for rehearing.

subject of these exceptions. The staff's position in the latter case is identical with its position in the former perforce the vinculum created by the contractual characteristics common to both.[3]

In the initial decision issued in MCN the Presiding Examiner set forth a precise and analytical justification for his assertion of Commission jurisdiction over the so-called leasehold acquisition, beginning with satisfactory perorations as to the inherent hazards to the consumer in this type of gas purchase by a pipeline, and closing with ameliorating findings and conclusions. In the Rayne Field decision, to which these exceptions are directed, the Presiding Examiner, although citing the very evils recognized by the examiner in MCN, takes an aberrant course in failing to assert Commission jurisdiction over the so-called leasehold acquisiton and by so doing fosters the very situation that is decried. These exceptions, however, are not intended primarily as a criticism of.

the examiner's rationale in Rayne Field for until and unless specific guideposts are laid down, conflicting results are almost inevitable. The difficulty of the decision lies mainly in its tendency to either avoid or neglect formidable arguments on the jurisdictional issue raised by staff. Consequently, and with the further knowledge that resolution of the jurisdictional issue requires a thorough understanding of the contractual terms and their effects on payments and production, as fully discussed in staff's initial brief, the staff respectfully moves that its initial brief in this proceeding, filed with the examiner and served on all parties of record March 22, 1962, be incorporated in these

[3] Compare staff's brief in the instant matters with its initial brief filed August 7, 1961, in MCN. The same staff counsel has represented the Commission in both proceedings.

exceptions by reference.[4] To do otherwise would require a complete restatement here of those matters set forth in some 70-odd pages of initial briefing. Specific reference will be made to sections of said brief in connection with the following enumerated exceptions.

II

Exceptions

1.

This Rayne Field decision relates to the rehearing had on the matters presented in the captioned docketed applications after the case had

previously been decided by the Commission but upon appeal was remanded by the Court of Appeals for the District of Columbia. The major maelstrom here swirls over (1) whether or not the Commission has jurisdiction over the so-called leasehold acquisition and conjunctively (2) whether this issue can rightfully be raised in the remanded proceeding. We shall here discuss the later point, the jurisdictional issue being the subject of our second enumerated exceptions.

The applicants have argued that the jurisdictional issue was decided in the negative by the Commission and the Court of Appeals and therefore cannot now be raised in the remanded proceeding. It is significant, however, that the examiner, although stating that the Court of Appeals "* * * held the acquisition of the leasehold interest in gas reserves was beyond the jurisdiction of the Commission * * *",[5] to which the staff takes exception, nevertheless

[4] A copy of staff's initial brief is appended to the copies of these exceptions being filed with the Commission.

[5] Examiner's decision, p. 6.

devotes a considerable portion of his decision to a discussion of the jurisdictional issue. It would thus appear that staff's argument in its initial brief under the caption (a) *Raising the Jurisdictional Question* was sufficient to overcome applicants' contentions of *res adjudicata*.

Since the examiner cites no support in his decision for his examination of the jurisdictional issue, and in contemplation of the applicants

taking exception to such reexamination, we here refer, for the Commission's guidance in support of such action, to pages 11 through 16 of staff's initial brief. Additionally, there is embodied therein staff's contra position to the examiner's aforequoted statement.

2.

As previously indicated, the examiner has declined to assert Commission jurisdiction over the so-called leasehold acquisition:

> In applying the principles of *Panhandle* and *Phillips* opinions, *supra*, to the evidence of record in this hearing, it is concluded the Commission was without jurisdiction over the Rayne Field lease and leasehold acquisition and the natural gas under said lease and leaseholds by Texas Eastern until (1) the gas was connectted to an interstate system of pipelines or (2) the gas was dedicated to a sale in interstate commerce. * * *[6]

This surprising conclusion, to which the staff takes exception, is an idealistic contradiction of the reality for, assuming the foregoing logic to be supported by the cases

[6] Examiner's decision, p. 9.

cited, one must bottom the rationale on the inculcating asseverations of the applicants that there is here involved a *leasehold acquisition.* The examiner summarily determines this to be the case without making any disposition, nay, not even mention, of staff's contention that what is actually involved is in fact a *purchase of gas.*

The examiner, further, cites *Panhandle* above but again does not dispose of staff's argument differentiating *Panhandle* from the matters presented in these docketed applications.

Finally, in evolving a determination that the Commission lacks jurisdiction over the so-called leasehold acquistion, the examiner perfunctorily footnotes a reference to the MCN decision with nary an attempt to dispute or discredit the analysis contained in that decision and relied upon by the staff in assertion of Commission jurisdiction over this type of gas purchase.

In consequence thereof, and in support of its exceptions and its affirmance of Commission jurisdiction, the staff reasserts its position set forth in its initial brief by making specific reference to pages 16 through 24 of said brief under the captions (b) *Jurisdiction as per the Facts of This Transaction,* (c) *Jurisdiction by Differentiation from the Panhandle Case* and (d) *Jurisdiction as per the Rationale in the MCN Decision.*

3.

Lastly, in recognition of the probable adverse impact this type of gas acquisition will have on Texas Eastern's consumers, the examiner attaches a condition to the certification which is naught but a chimerical palladium.

Although the examiner does not assert Commission jurisdiction over the so-called leasehold acquisition, he nevertheless attempts to afford the consumer a much needed measure of protection by the following findings embodied within the decision culminating in the attachment of a specific condition to his certification of the subject applications:

> Because the Commission did not have jurisdiction over the acquisition of these Rayne Field leases and the natural gas thereunder presents no legal barrier to the Commission's jurisdiction over the purchaser of the gas. * * * [7]
>
> * * * * *
>
> * * * It appears virtually impossible, from the record, to determine the future costs to Texas Eastern for the Rayne Field since they are predicated upon assumptions and estimates. * * * [8]
>
> * * * * *
>
> * * * Combining the costs pertaining solely to the Rayne Field gas with the costs of the remainder of the gas supply available to Texas Eastern means "rolling in" gas costs which may be appreciably greater than the average cost of Texas Eastern's gas supply existing immediately prior ot Texas Eastern's acquisition of the Rayne Field gas and leases.[9]

After determining that the initial price to be charged by Texas Eastern for the sale of Rayne Field gas to Texas

[7] Examiner's decision, p. 10.

[8] Examiner's decision, p. 12.

[9] Examiner's decision, p. 17.

Eastern shall be the "in line" price as of 1957, the year when these contracts were entered into, said

price being found to be 18.5¢ per Mcf[10] with which the staff concurs, the examiner concludes:

> (6) It is further necessary and appropriate in the administration of the Natural Gas Act that Texas Eastern maintain at all times, during the period the Rayne Field gas is available to it, complete and separate records to accurately reflect the total costs for producing the Rayne Field gas all as more fully detailed and directed hereinabove.[11]

The staff submits that the above-cited condition is but a temporary expedient which does not have the efficacy to promote the objective that it seeks. There is nothing contained therein to prevent Texas Eastern from rolling in Rayne Field cost with all of its other company-owned production costs in future rate proceedings. Specific reference is made to pages 24 through 60 of staff's initial brief wherein is set forth a complete discussion of Rayne Field costs. The affect and inequities arising out of a certification such as that proposed by the examiner or alternative conditioned certificates are set forth on pages 61 through 70 of said initial brief.

In conclusion the staff respectfully submits that on the basis of the record made in this proceeding and the pertinet findings of the examiner the only equitable solution to the disposition of these

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[10] Examiner's decision, p. 16.

[11] Examiner's decision, p. 19.

applications which would safeguard Texas Eastern's consumers requires à la MCN:

1. Assertion of Commission jurisdiction over the so-called leasehold acquisition.

2. Finding that this type of gas purchase in the case at bar is not in the public interest.

3. Denial of the applications here with the provision however that the producer applicants, within a specified time, may file for reinstatement their 1957 contracts with Texas Eastern, which provide for the sale of Rayne Field gas to the latter on a per Mcf basis.

4. Acceptance of those reinstated filings and, subject to any petition in opposition, summarily grant to the producer-applicants certificates conditioned on an initial price of 18.5¢ per Mcf. The application of Texas Eastern to construct facilities to attach the gas would likewise be granted.

Respectfully submitted,

GEORGE P. LEWNES
George P. Lewnes
Commission Staff Counsel

Washington, D. C.
September 14, 1962

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(Docketed Feb. 6, 1963)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Opinion No. 378

	Docket Nos.
TEXAS EASTERN TRANSMISSION CORPORATION	G-12446, G-12447
CONTINENTAL OIL COMPANY	G-12432

Opinion and Order on Application for Certificate Determining Jurisdiction, Deferring Decision and Requiring Further Filings

Issued: February 6, 1963

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APPEARANCES

For the Brooklyn Union Gas Company
Edwin F. Russell
Harry G. Hill, Jr.
Brooklyn, New York

For New York Public Service Commission
Barbara M. Suchow
New York, New York
Kent H. Brown
Charles J. Cox
Albany, New York

For New Jersey Natural Gas Co.
Sidney M. Schreiber
Newark, New Jersey

For the United Gas Improvement Co.
J. David Mann, Jr.
John E. Holtzinger, Jr.
J. Frederick Moring
Washington, D. C.

For Long Island Lighting Co.
David K. Kadane
E. M. Barrett
Bernard Hulkower
Mineola, New York

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For Pennsylvania Public Utility Commission
Alan R. Squires
Hubert E. Squires
Harrisburg, Pennsylvania

For the Ohio Fuel Gas Company and the Manufacturers Light and Heat Company.
Frederick H. Clark
Brooks E. Smith
William C. Hart
R. A. Rosan
New York, New York

For Public Electric and Gas Company
J. Harry Mulhern
Edward S. Kirby
Fred M. Broadfoot
James R. Lacey
Newark, New Jersey
William R. Duff
Washington, D. C.

For the Staff of the Federal Power Commission
George P. Lewnes
Washington, D. C.

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SWIDLER, Chairman:

These proceedings relate to the supply of gas from the Rayne Field in Louisiana to Texas Eastern Transmission Corporation and arose from appilcations filed by Texas Eastern and Continental Oil Company for certificates of public convenience and necessity under Section 7 of the Natural Gas Act. The proceedings are before us after remand of a prior order by the Court of Appeals,[1] further hearings, a decision of the presiding examiner issued June 29, 1962, and exceptions by several of the parties. The case was argued orally on November 29, 1962.

The proceedings are the subject of an involved history. Texas Eastern, which is a natural-gas company owning and operating an interstate natural gas transmission system extending from Texas to the Philadelphia-Newark area, executed gas purchase contracts on February 1, 1957, with Continental, M. H. Marr, Sun Oil Company and General Crude Oil Company to purchase their natural gas production in the Rayne Field in Acadia Parish, at an initial price of 23.9 cents per Mcf including state taxes of 1.3 cents per Mcf. On April 22, 1957, Texas Eastern filed its application seeking a certificate authorizing it to construct an doperate a 2200 horsepower compressor station and 22 miles of 14-inch pipeline to transport natural gas from the Rayne Field to Opelousas, Louisiana, where the gas was to be delivered into its pipeline system. At about the same time certificate applications were filed by Continental and the other producers. After a hearing the examiner issued a decision granting unconditioned certificates of public convenience and necessity, and exceptions were filed.

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[1] *P.S.C. of N.Y.* v. *F.P.C.*, 287 F. 2d 143 (CADC).

Before the Commission had acted on the exceptions the Court of Appeals in *P.S.C.* v. *F.P.C.*, 257 F. 2d 717 (CA3)[2] reversed an order of the Commission granting unconditioned certificates for sales of natural gas from off-shore Louisiana at 22.4 cents per Mcf on the ground that the price had not been justified. Thereafter the producers in the present proceeding requested withdrawal of their applications for sales at a somewhat higher initial rate and Texas Eastern filed a petition to reopen the hearing and to amend its application to reflect a change in its plan for acquiring the Rayne Field gas.

Under the new plan the facilities to be built by Texas Eastern would be essentially the same as under the previous plan and the same volumes of gas would be flowing into its system. The difference is solely in the contractual arrangements. Texas Eastern would acquire the leasehold interests in the reserves which the producers had formerly committed to the gas purchase contracts with Texas Eastern. To carry out the plan the four Rayne Field producers, Continental, Sun, Marr and General Crude entered into a contract designated "Lease Sale Agreement" dated December 4, 1958, with Louisiana Gas Corporation, an affiliate of Texas Eastern. Since by a simultaneous contract Texas Eastern was to have the right to acquire the title to the leases from Louisiana Gas, we shall refer to Texas Eastern as the real party in interest. Under the Lease Sale Agreement, and attached assignment Texas Eastern was to make an initial cash payment of $12,420,500 and a payment of 16 annual promissory notes amounting to $121,975,200, altogether totalling $134,395,700. On their part the four producers would convey to Texas Eastern

[2] Affirmed as *Atlantic Refining Co.* v. *P.S.C.*, 360 U.S. 378, the *CATCO* case.

all gas rights, wells and related equipment down to the base of what is called the Nodosaria A Sand.[3] The producers would reserve their interest in oil and other minerals and a production payment covering all the liquids to be extracted from the gas. The Agreement is subject to certain conditions precedent including a tax ruling in favor of the producers that the sale of the leasehold interests would be considered a long-term captital gain and the issuance of a certificate of public convenience and necessity to Texas Eastern that would enable it to take and transport the gas.

While there is controversy in the briefs in the present stage of the proceeding over the extent of the Rayne Field reserves, they are known to be of substantial size. Texas Eastern estimates production to be 924,678 Mmcf in the years 1961 through 1989. Based on total recoverable reserves of 990,000 Mmcf Texas Eastern acquired approximately 79 percent under the original leasehold acquisition transaction in 1958. Since that time Texas Eastern has acquired the interests of minority leaseholders bringing its total percentage interest in the Rayne Field reserves up to

approximately 81.5 percent. As to the remaining gas, mostly royalty gas, Texas Eastern pays for it on the basis of 22.6 cents per Mcf including the Louisiana severance tax of 2.3 cents per Mcf.

Texas Eastern's request for reopening the proceeding to take into account its lease purchase plan was granted, and on June 23, 1959, the Commission in Opinion No. 322, 21 FPC 860, issued an unconditioned certificate to Texas Eastern for its proposed facilities. In its opinion the Commission discussed the lease sale arrangement, and held that the record in the case amply supported the conclusion that

[3] The base is at 13,650 to 13,890 feet.

the elements of public convenience and necessity were satisfied by Texas Eastern's project without examining the cost to Texas Eastern of the Rayne Field leases. It noted "Texas Eastern has not filed an application for a certificate authorizing the acquisition of the Rayne Field leases and we have no authority to issue such a certificate" (21 FPC at p. 864).

In its decision of December 8, 1960, the reviewing court[4] noted that the language and tenor of the Commission's opinion appeared to confer general approval upon the terms of the acquisition arrangement and to this extent was unsuported by substantial evidence. The court thought it of "no importance here that the transactions by which Texas Eastern proposes to acquire the gas will themselves be, by virtue of a change in form, beyond the regulatory control of the Commission". The court indicated that the Commission could regulate the purchaser regardless of the status of the seller and added:

> Two courses are open to the Commission. It may, by clarification of the order presently under review, expressly disclaim any approval of the price to be paid for natural gas by the applicant. See *Kansas Pipe Line and Gas Co., et al.*, supra note 4. Or it may reopen the record in the certificate proceeding to permit Texas Eastern to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity.

As a result of the remand the Commission issued an order on July 14, 1961, 26 FPC 167, in which it found that the first course enumerated by the court would leave unsettled matters of public importance and would provide inadequate protection to the public. It thereupon reopened the proceedings for the purpose of determining:

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[4] *P.S.C.* v. *F.P.C.*, 287 F. 2d 143 (CADC).

(1) Whether the public convenience and necessity require that the certificate issued in these proceedings by our order of June 23, 1959, and set aside by the Court of Appeals, be reissued in whole or in part;

and also whether the cost of the Rayne Field gas was out of line, whether the proposal was in the public interest even if the cost was out of line, and whether Texas Eastern should cease operating the Rayne Field facilities or exclude them from its costs.

Hearings were held in October, November and December of 1961, and the examiner issued his decision June 29, 1962. The examiner was of the opinion that the Commission was without jurisdiction over the Rayne Field lease and leasehold acquisition and the natural gas thereunder until the gas was connected to an interstate pipeline or was dedicated to interstate commerce, but that the Commission could regulate the purchase of the gas, Texas Eastern, and determine at what price the public convenience and necessity required dedication. After considering the evidence he concluded that it was virtually impossible to determine the future costs to Texas Eastern for the Rayne Field service since they were predicated upon assumptions and estimates. He therefore turned to a consideration of the in-line price as of April 22, 1957, when, he said, the gas was dedicated to the interestate market. He found that the initial price allowed to Texas Eastern for the Rayne Field gas in interstate commerce should be conditioned at 18.5 cents per Mcf, exclusive of taxes, at 15.025 psia, and issued a certificate to Texas Eastern so conditioned. He also required that the company keep separate accounts for the Rayne Field costs, so that the costs of this gas could be identified in any future rate proceedings.

Exceptions to the decision were filed by Texas Eastern, The United Gas Improvement Company (UGI), Philadelphia Electric Company and our staff.

The issues which emerge from the record in this proceeding, are whether we have jurisdiction over the lease sale arrangement, whether the arrangement is required by the public convenience and necessity, and what is the appropriate disposition to be made at this stage in the proceedings.

Jurisdiction

In determining whether to grant a certificate to Texas Eastern the cost of its gas supply is of obvious importance. If at the time we are considering a pipeline's application for a certificate we have before us the applications of producers to sell gas to the pipeline we can, of course, consider the producers' proposed initial price and can condition their certificates appropriately. In the present case Texas Eastern contends, and the examiner agrees, that we do not have jurisdiction over the acquisiton of the gas supply because what was to be a sale of gas has been converted into a sale of leases, and we are left, it is said, only with the jurisdiction to disallow a portion of Teaxs Eastern's cost of its gas supply. We do not agree that there is sueh a gap in our jurisdiction under the Natural Gas Act. As will be developed below, our jurisdiction, under the circumstances of this case, extends to the sale of gas to Texas Eastern whether technically in the form of leasehold transaction or otherwise.

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Before going into the question of jurisdiction we may note that Texas Eastern argues that this question has been settled and is not before us. Texas Eastern disagrees with the conclusion of the staff and the interveners that the Commission is free to re-examine the jurisdictional ques-

tion related to the so-called Rayne Field lease acquisition. On our part we agree with the conclusions of the interveners and the staff.

In our previous opinion the Commission merely noted without discussion that we had no authority to issue a certificate for the acquisition of the leases (21 FPC at p. 864). The court, again without discussion, noted that the "commission has been held to lack jurisdiction over gas leases" citing *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498. It is apparent the issue was hardly considered in the earlier phase of this proceeding; in our opinion, it may be considered at this stage if for no other reason than that the issue was given but passing mention by the Commission and the Court. In *N.L.R.B.* v. *Baltimore Transit Co.*, 140 F. 2d 51, 55 (CA4), certiorari denied 321 U.S. 795; it was said that "An administrative agency, charged with the protection of the public interest, is certainly not precluded from taking appropriate action to that end because of mistaken action on its part in the past."

In *F.C.C.* v. *Pottsvile Broadcasting Co.*, 309 U.S. 134, an order of the Federal Communications Commission denying an application for a radio station license was reversed because the Commission had misunderstood state law. Upon remand the F.C.C. set argument on the application with two rival applications that had been filed and heard subsequently. Upon the objection of Pottsville and review of this procedural issue the Supreme Court held that when the Court of Appeals had laid bare the error with respect to state law, the Commission was not limited to correcting this error but "was again charged with the duty of judging the application in the light of 'public convenience, interest or necessity'" (309 U.S. at p. 145). One of the critical public convenience and necessity issues which became available for reconsideration by this Commission when its earlier decision was reversed and remanded for "further

proceedings not inconsistent'' with the Court of Appeals opinion, was the underlying question of its jurisdiction over the lease acquisition.

Texas Eastern also contends that apart from what we could have done on remand, we failed to specify the jurisdictional issue in reopening the proceeding. In our order of July 14, 1961, (26 FPC 167) we reopened the record to permit Texas Eastern, in the words of the Court of Appeals, ''to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity''. We then added:

> ''It is also necessary and reasonable that we define, *but not necessarily limit*, the issues and prescribe procedures, as hereinafter ordered, so as to guide the course of this reopened proceeding.'' [underlying added]

We thereupon listed some of these issues including the issue, as quoted earlier in this opinion, ''Whether the public convenience and necessity require that the certificate—be reissued in whole or in part.'' By the wording of this order we were not necessarily providing for a further hearing with respect to all issues. The issue of our jurisdiction is fundamental and could not be waived,[5] but in any event the jurisdictional issue is comprehended in the issue whether the public convenience and necessity require that the certificate be reissued. The jurisdiction issue was raised and briefed before the examiner, and was briefed and argued before the Commission.

In considering the question of the Commission's jurisdiction over the in-place sale of the Rayne Field gas to Texas Eastern. it must be kept in mind that the original

[5] Compare *United States* v. *Corrick*, 298 U.S. 435, 440; *Mitchell* v. *Maurer*, 293 U.S. 237, 244.

sales contract between the producers and Texas Eastern was cleraly subject to FPC jurisdiction and not subject to state regulation. The changes made in the terms of the agreement would not appear to confer state jurisdiction over this interstate transaction. In such a situation, the Supreme Court has stated that it is "not inclined to approach the problem negatively, thus raising the possibility that a 'no man's land' will be created. Compare *Guss* v. *Utah Labor Board*, 353 U.S. 1 * * *. That is to say, in a borderline case where congressional authority is not explicit we must ask whether state authority can practicably regulate a given area and if we find that it cannot, then we are impelled to decide that federal authority governs."[6] Congress "meant to enact a comprehensive and effective regulatory scheme",[7] . . . "to protect consumers against exploitation at the hands of natural gas companies."[8]

We have jurisdiction over this transaction because by it the producers transferred natural gas to Texas Eastern for resale by Texas Eastern in the interstate market. The fact that the gas, which had been developed to an extent where reasonable estimates could be made as to the available reserves was sold in bulk rather than on a per Mcf basis does not change the nature of the sale. Although in form a lease transfer, we agree with the staff that we should look beyond the label of the transaction to its essence.[9] The contract provides for a downpayment and 16 annual promissory notes in return for the transfer of leasehold rights plus equipment, but the effect resembles

[6] *Transcontinental Gas Pipe Line Corp.* v. *F.P.C.*, 365 U.S. 1, 19-20.

[7] *Panhandle Eastern Pipe Line Company* v. *F.P.C.*, 332 U.S. 507, 520.

[8] *Sunray Mid-Continent Oil Company* v. *F.P.C.*, 364 U.S. 137, 147.

[9] Of course, we are not concerned with the transfer of other property rights, if they are involved. Nor are we concerned with the operation of the producing properties, wells or the equipment for producing and gathering natural gas.

the ordinary sale of gas because of the following features among others:

(1) Only gas in particular strata is conveyed; and the producers retain their interest in oil and other minerals;

(2) In effect the transaction is for the sale of stripped gas inasmuch as the producers are to receive a production payment from Texas Eastern from the sale of natural gas liquids;

(3) While the payment for the leases is represented by notes and spread over a 16-year period, the notes have an acceleration clause by which payment is accelerated if production is increased, so that Texas Eastern's payments would be geared to production;

(4) By a management agreement dated July 27, 1959, Continental agrees to operate the field, including drilling wells and managing all wells and equipment, and to deliver to Texas Eastern specified minimum daily quantities of gas; Texas Eastern will reimburse Continental for its expenses in opearting the field but the assignment of the leases shows that the costs of operating the leases will be defrayed out of the production payments to which Continental is entitled;

(5) It is Louisiana Gas, not Texas Eastern which is liable on the notes to the producers, so that the true purchaser of the gas not bound by the principal obligation of the lease sale transaction.

In opposition to the claim of jurisdiction Texas Eastern cites *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, which is also cited by the Court of Appeals in the present proceeding. In that case Panhandle transferred substantial gas leases to a subsidiary, Hugoton Production Company, which was to sell the gas in intrastate commerce, and subsequently spun off the Hugoton stock to the Pan-

handle stockholders. The Court held that the Commission did not have jurisdiction over the transaction and denied it an injunction to to prevent the transfer. Quoting from Section 1(b) of the Act which excludes from our jurisdiction "the production or gathering of natural gas" the Court concluded that "leases are an essential part of production" (337 U.S. at p. 505), that Congress "excluded the Commission from exercising any direct control or regulation over the actual production and gathering of natural gas," (337 U.S. at p. 507) and that "the transfer of undeveloped gas leases" was "an activity related to the production and gathering of natural gas and beyond the coverage of the Act" (337 U.S. at 515).

We think that the present case is distinguishable from that involved in the *Panhandle* case. In that case the leases were undeveloped so that the transfer did not resemble a sale of gas as did the sale of developed leaseholds here. Furthermore, the reserves here are connected or are to be connected to an interstate pipeline and are to be sold in interstate

commerce while those in *Panhandle* were transferred to a corporation which subsequently sold them in intrastate commerce. Also, in the *Panhandle* case the gas reserves passed entirely out of the control of the seller while here the seller retained rights to oil, gas if found other than in particiular strata, production payments for liquids, and management of the field.

Apart from these distinctions, which we think controlling in themselves, the *Panhandle* case was decided in 1949, five years before the Supreme Court held in the *Phillips* case[10]

[10] *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672. It may be noted that the court in *City of Detroit* v. *F.P.C.*, 230 F. 2d 810 (CADC), certiorari denied 352 U.S. 829, pointed out the influence of the *Phillips* case on the procurement of gas supplies.

that sales of natural gas by producers in interstate commerce were subject to our jurisdiction. In the *Phillips* case the Court found that sales from producers to pipelines occurred after production and gathering as those terms are used in Section 1(b) of the Act had been completed. However, the Court did not rest its decision on this narrow ground but said that it was the "congressional intent to give the Commission jurisdiction over the rates of all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company." The instant transaction obviously falls within this category aside from any question as to the applicability of *Panhandle* to the transfer of gas leases to intrastate purchasers.

The *Phillips* case has been followed in numerous cases, including *Saturn Oil & Gas Co.* v. *F.P.C.*, 250 F. 2d 61, 68 (CA10), certiorari denied 355 U.S. 956, and *Continental Oil Co.* v. *F.P.C.*, 266 F. 2d 208, 210 (CA5), certiorari denied, 361 U.S. 827, which are of particular interest here. In the *Saturn* case the sales were made at the wellhead. The Court considered that they were made after production but prior to gathering and interpreted the *Phillips* case to hold "that the production or gathering exemption of section 1(b) did not apply to exclude from the jurisdiction of the Commission sales by any producer of natural gas for transportation interstate for resale to the public." In the *Continental* case the sale was made at the top of two valves in the "Christmas Tree" at the wellhead. The Court concluded that "production" was complete before the point of sale, but it is obvious that "gathering" had not been completed.

Thus we conclude that a sale of gas in interstate commerce during the course of production and gathering is subject to our jurisdiction. Likewise, the sale of gas (or

reserves) made under the circumstances here involved by the producers to Texas Eastern for transportation in its pipeline is a sale of gas for resale in interstate commerce and is subject to our

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jurisdiction. Any other result would exalt form over substance, would give greater weight to the technicalities of contract draftsmanship than to the achievement of the purposes of the Natural Gas Act, and would impair our ability to control the price received for gas sold to the pipelines in interstate commerce to the detriment of the ultimate consumer. Control limited to approving the costs of the gas to the purchasing pipeline is, of course, not an effective way to regulate producer prices because in the large a pipeline must be allowed to pass on its purchased gas costs to the ultimate consumer or it cannot continue to discharge its public service responsibilities.

The Lease Sale

In view of our findings that the in-place sale of the Rayne Field gas reserves to Texas Eastern is subject to our jurisdiction, it is obvious that the proceeding is not in a posture for final disposition at this time. It will now be necessary for the producers to file an application for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act to obtain Commission approval of the sale of this gas.

It is clear from the record of this case that it is not in the public interest for this Commission to certificate a transaction such as the one presented to us on this record. Having asserted our jurisdiction, the price that the producers will receive under the proposed lease sale arrangements must be subject to the Commission's authority to fix just and reasonable rates. However, the terms of the instant arrangements which contemplate that Texas East-

ern would pay the producers a sum of money in cash and then make payments on promissory notes over a 16-year period certainly did not envision adjustments from time to time to comply with FPC rate regulation and it is indeed difficult to envision how we could exercise our regulatory authority within the framework of such an arrangement.

Another consideration which is of importance in determining the type of arrangements for sales by producers to pipelines is the fact that the Commission is now implementing the area approach to producer regulation. Sales under the arrangements herein contemplated could not readily be adjusted to our determination of just and reasonable rates in an area rate proceeding and they would thus escape effective rate regulation.

The record in this proceeding clearly demonstrates the difficulty of attempting to determine a proper price for this gas under the present arrangements. Evidence on average costs per Mcf was presented by Texas Eastern on various assumptions ranging from a low of 18.79 cents per Mcf to 24.34 cents per Mcf at 15.025 psia. These costs include operating expense; depreciation, depletion and amortization; return; and royalties. Texas Eastern, however, objected to the inclusion of certain items such as royalty payments and severance taxes and the staff argued that, because of a number of considerations, including the use of an untested reservoir and an improper estimate of porosity and connate water, the amount of the reserves

transferred was exaggerated, so that the cost per Mcf was actually higher. Thus, in order to determine the cost, lengthy hearings would be required and careful consideration would have to be given to factors that should not be involved in a certificate proceeding. Even then the per Mcf price of the gas could not be determined with any reasonable degree of accuracy at this time because many of

these factors are based on estimates and forecasts of varying degrees of reliability.

In view of the deficiencies of the lease sale arrangement we are of the opinion that it would serve no purpose to analyze the cost evidence here presented and the objections made to it and that in the exercise of our jurisdiction over the transaction we should require the formulation of a different means for Texas Eastern's acquiring gas supplies. This does not mean that we must invariably oppose a pipeline assembling its own reserves from whatever source. We recognize that there are frequently advantages in a pipeline owning and operating its gas reserves, and we do not hold that all gas purchases on a bulk rather than a per Mcf basis are necessarily contrary to the public interest. What is objectionable here is the attempt to disguise a transaction which in effect is a sale of gas by casting it in the form of a sale of leases with provisions that would make it difficult if not impossible to subject to regulatory control the price for the sale to an interstate pipeline of this large body of gas.

Disposition of These Proceedings

We have before us a complicated procedural situation. As will be recalled, Texas Eastern shifted from a straight purchase of gas to the lease sale arrangement. In our prior decision we did not hold that we had jurisdiction over this transaction but, in effect, accepted it as labeled by the parties in granting a certificate to Texas Eastern. The reviewing court, without discussion, agreed with the Commission on the question of jurisdiction, but held that we should either have disclaimed approval of the price under the lease sale or should have examined the justification for the price. We reopened the proceeding largely to obtain further evidence on whether the lease sale was consistent with the public interest. We now find that we have juris-

diction over the sale, and that the transaction is not in the public interest as a way to acquire gas supplies.

In these circumstances the parties should be given ample opportunity to work out new arrangements in the light of the requirements of the Natural Gas Act and our discussion in this opinion. We shall therefore afford Texas Eastern and its suppliers a period of 6 months to complete such arrangements and make the necessary filings with this Commission. This delay would not be detrimental to the public because Texas Eastern is already taking gas from the Rayne Field.[11]

In making the requirement for filing a new arrangement we are not defining our requirements with precision, for we think that in view of the procedural delays and the contractual arrangements that have been made the parties should have considerable freedom to extricate themselves from this complicated situation. However, consistent with our discussion above the lease sale arrangement should be rescinded and the producers, or one producer acting for all, should file rate schedules for the sale of gas to Texas Eastern and corresponding applications for certificates of public convenience and necessity. Texas Eastern, on its part, should file an amended certificate application referring to its purchase of gas. The new contract, of course, would be effective from the delivery of the first gas from the Rayne Field and would be a substitute for the lease sale arrangement now proposed. We do not think it would be inequitable to require this revision, for the Lease Sale Agreement was specifically made subject to the buyer's obtaining a certificate, PSC in the course of the earlier

[11] On November 27, 1957, and December 5, 1958, Texas Eastern was granted temporary certificates for part of its proposed facilities, but its permanent certificate for the lateral for the Rayne Field was granted in Opinion No. 322 and in effect nullified by the court.

proceedings had expressed its opposition to the lease arragenment as it was constituted, and the court on review did not affirm our granting of a certificate to Texas Eastern.

The Commission further finds:

(1) Continental, Sun, Marr and General Crude are independent producers of natural gas and natural gas companies within the meaning of the Natural Gas Act as heretofore found by the Commission or by participation in the Lease Sale Agreement discussed herein.

(2) The Lease Sale Agreement referred to above represents sales of natural gas for resale in interstate commerce, which are subject to our jurisdiction under the Natural Gas Act, and such sales, together with the construction and operation of any facilities necessary therefor, are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Continental, Sun, Marr and General Crude have not obtained certificates or filed rate schedules in connection with their sales of natural gas subject to the jurisdiction of the Commission as required by Section 4 and 7 of the Natural Gas Act.

(4) Texas Eastern is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission in its order issued July 7, 1958 (20 FPC 3).

(5) The construction and operation of facilities by Texas Eastern as hereinbefore described, all as more fully described in the application in these proceedings, will be used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and operation thereof are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(6) The construction and operation of facilities subject to the jurisdiction of the Commission as proposed herein by Texas Eastern have not been shown to be required by the public convenience and necessity.

(7) It is appropriate in the administration of the Natural Gas Act that decision on Texas Eastern's application for a certificate of public convenience and necessity be deferred and that further filings be required on the part of Texas Eastern and its suppliers of gas.

The Commission orders:

(A) Decision on Texas Eastern's application for a certificatie of public convenience and necessity in the above-entitled proceedings is hereby deferred.

(B) Continental, Sun, Marr and General Crude within six months of the issuance of this order shall make filings of appropriate rate schedules and applications for certificates of public convenience and necessity. Within the same period Texas Eastern shall file a revised application for a certificate to put into effect a new arrangement for the supply of gas to Texas Eastern from the Rayne Field in conformity with this opinion, the public interest and the Natural Gas Act.

(C) Exceptions not granted herein are hereby denied.

By the Commission. Commissioner O'Connor concurring, filed a separate statement appended hereto, Commissioner Woodward not participating.

GORDON M. GRANT
Gordon M. Grant,
Acting Secretary.

(SEAL)

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G-12446, G-12447

TEXAS EASTERN TRANSMISSION CORPORATION

G-12432

CONTINENTAL OIL COMPANY

(Issued February 6, 1962)

O'CONNOR, Commissioner, *concurring:*

While I join in the disposition of this case by the majority, certain differences in reasoning require that I express my position separately.

I agree with the majority for the reasons stated in the Order that the question of our jurisdiction over this sale has not been foreclosed. On that question I conclude, first, that the transaction involves a "sale" of "natural gas" as used in Section 1(b) of the Natural Gas Act. Because of the proved nature of these reserves, we have here, in effect, a sale of a relatively well defined block of gas, as distinged from the sale of indefinite mineral rights over a given area of land. Being a sale of a defined block of gas, it unavoidably becomes a "sale" of "natural gas" contemplated by the Act. Second, I conclude this transaction is "in interstate commerce" because, and solely because, the necessary effect of this sale to an interstate pipeline is to place this gas into the stream or pattern of interstate commerce.

I further agree that the case before us must be remanded because in its present form the sale is not susceptible to effective price regulation. The controlling difficulty, I believe, is that the amount of gas being purchased by the pipeline is indefinite, and therefore the ultimate price per Mcf to be charged the consumers cannot be ascertained. Without knowing the Mcf price of this gas, we have no means of determining whether the price paid for it is in

the public convenience and necessity. For this reason, I would remand the case for the parties to the transaction to remedy this defect. This can be done by obtaining a guarantee from the producers that the reserves will produce a minimum amount of gas, by obtaining a stipulation from all parties in this case of the minimum reserves, or by producing compelling expert evidence of the minimum figures.

If the transaction is so modified, I believe we will be in a position to effectuate our duties under the Natural Gas Act. It is true that the form of this transaction will still be unusual, and because of this fact it will produce difficulties in techniques of regulation. Particularly, since this transaction contemplates an outright sale of a block of gas for a fixed and certain price, the Commission will have only one occasion to pass on the appropriateness of the price, rather than a continuing jurisdiction to readjust it to changing circumstances. The majority on page 9 of its Order suggests that this difficulty is fatal (although on page 10 it notes that all

in-place purchases are not hereby precluded). I thoroughly disagree. There is nothing inherent in a one-shot transaction that precludes effective regulation. All recent regulation of pipeline production has been done on this basis—expenses for outright purchases of undeveloped leaseholds, lands or rights once incurred and approved go into the rate base and are not subjected to continuing adjustments, whether paid for in cash or on an installment basis.

To make this regulatory inconvenience a controlling factor would be to rule out in-place purchases by pipelines since it would eliminate the attraction to producers of receiving a firm price for a completed sale of a defined block of gas. The net effect would be that a pipeline with the

staff, facilities, and finances for exploration and development could obtain its own production with all the advantages thereof, but a pipeline not in a position to carry out an exploration program could not obtain its own production by purchasing proven reserves in place. Such a result, I submit, would be violative of the public interest.

L. J. O'Connor, Jr.
Commissioner

BEFORE THE
FEDERAL POWER COMMISSION

In the Matters of

Texas Eastern Transmission Corporation
Continental Oil Company

Docket Nos. G-12446, G-12447, G-12432

March 6, 1963

Application For Rehearing And Stay By General Crude Oil Company

Comes now General Crude Oil Company (General Crude) and, pursuant to the provisions of Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules of Practice and Procedure, being aggrieved, hereby applies for rehearing and stay of the Commission's Opinion No. 378 and accompanying order in the above-entitled proceedings, issued on February 6, 1963. In support of this application for rehearing and stay, General Crude states as follows:

I.

General Crude adopts as its own application for rehearing and stay herein the application for rehearing and stay by Sun Oil Company (Sun), which is concurrently being

filed in the above-entitled proceedings. A copy of Sun's application is attached hereto and incorporated herein. The factual position of General Crude in the transactions and proceedings under consideration by the Commission in its Opinion

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No. 378 is in all particulars parallel with and identical to that of Sun, with the exception of the fractions of interest and amounts of money involved in the transfer of the interest in gas leaseholds by General Crude. The positions set forth in the application for rehearing and stay by Sun with respect to the law applicable to such transactions in the above-entitled proceedings are hereby adopted by General Crude.

WHEREFORE, for all of the foregoing reasons, General Crude requests the Commission to grant this application for rehearing and to reverse and set aside its Opinion No. 378 and accompanying order. If the Commission should not grant this application, General Crude requests that the Commission stay Opinion No. 378 and the accompanying order pending judicial review.

Respectfully submitted,

GENERAL CRUDE OIL COMPANY

W. M. Streetman

ANDREWS, KURTH, CAMPBELL & JONES

By HERF M. WEINERT

Herf M. Weinert

Andrews, Kurth, Campbell & Jones

W. M. Streetman

Humble Building

Houston, Texas

Attorneys for General Crude Oil Company

March 6, 1963

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DISTRICT OF COLUMBIA) *SS*

Before me, the undersigned authority, on this day personally appeared Herf M. Weinert, who, being by me duly sworn, on oath deposes and says: That he is Attorney for General Crude Oil Company; that he has prepared and read the foregoing Application of General Crude Oil Company for Rehearing, and that the facts stated therein are true to the best of his knowledge, information, and belief.

/s/ HERF M. WEINERT
Herf M. Weinert

Sworn to and subscribed before me, this 6th day of March, 1963.

/s/ THOMAS C. EVANS
Thomas C. Evans

(Seal)

My Commission expires September 14, 1965.

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Docket No. G-12446, *et al.*

CERTIFICATE OF SERVICE

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BEFORE THE
FEDERAL POWER COMMISSION

In the Matters of

TEXAS EASTERN TRANSMISSION CORPORATION
CONTINENTAL OIL COMPANY

Docket Nos.
G-12446, G-12447
G-12432

Application For Rehearing And Stay By Sun Oil Company

Comes now Sun Oil Company (Sun) and, pursuant to the provisions of Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules of Practice and Procedure, being aggrieved, hereby applies for rehearing and stay of the Commission's Opinion No. 378 and accompanying order in the above-entitled proceedings, issued on February 6, 1963. In support of this application for rehearing and stay, Sun states as follows:

I.

Sun filed an application for a disclaimer of jurisdiction, or, in the alternative, for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act, on July 17, 1957, to sell natural gas to

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Texas Eastern Transmission Corporation (Texas Eastern) from the Rayne Field in Docket No. G-12913. However, the contract involved was cancelled and the certificate application was withdrawn, as recited in the Notice of Withdrawal which Sun filed with the Commission on July 9, 1958. This Notice of Withdrawal was formally accepted by the Com-

mission by letter from the Acting Secretary, dated August 11, 1958, by direction of the Commission, addressed to Sun Oil Company, the body of which reads as follows:

> "Pursuant to Section 1.11(d) of the Commission's Rules of Practice and Procedure, the notice of withdrawal filed on July 9, 1958 by Sun Oil Company in Docket No. G-12913 became effective on August 9, 1958 and the record in this proceeding was closed as of that date.
>
> "By direction of the Commission."

II.

The Commission's Opinion No. 378 and accompanying order purport to treat and to make Sun a party to these proceedings at this time and to enter an order affecting Sun's rights and interests. On that premise Sun has standing to file this application for rehearing and stay. Assuming, for the purpose of this application, that Sun was made a party to these proceedings by the order issued

February 6, 1963, the order is unlawful and void as to Sun, *inter alia*, because (1) the Commission lacks jurisdiction over the gas leases involved; (2) the Commission lacks jurisdiction over the transfer of the gas leases involved; (3) the Commission lacks jurisdiction to order Sun, as purportedly required by Paragraph (B) of its order, to "make filings of appropriate rate schedules and applications for certificates of public convenience and necessity"; and (4) the Commission lacks jurisdiction to order Texas Eastern, as further purportedly required by Paragraph (B) "to put into effect a new arrangement for the supply of gas to Texas Eastern from the Rayne Field in conformity with this opinion."

III.

In reaching the erroneous conclusion that it has jurisdiction over the leases and the transfer of leases involved, the Commission avowedly seeks to overrule and set aside its own prior decision in this case, the opinion of the Court of Appeals of the District of Columbia in this same case, the decision of the Presiding Examiner in the reopened proceeding, and the opinion of the Supreme Court of the United States in another case which involved this identical issue. Thus, in its effort to broaden its jurisdiction beyond that

conferred upon it by Congress in the Natural Gas Act, the Commission has flagrantly disregarded Commission and Court precedent, all of which are contrary to the conclusion reached in this case. This fact is readily demonstrable.

IV.

In its Opinion No. 322 in these proceedings, issued June 23, 1959, approving the construction and operation of facilities by Texas Eastern to take the Rayne Field gas the Commission found (21 F.P.C. 860, at page 864):

> "... Texas Eastern has not filed an application for a certificate authorizing the acquisition of the Rayne Field leases *and we have no authority to issue such a certificate*" (Italics supplied).

Thus, contrary to the statement in the Commission's current Opinion No. 378 (page 5) there was "discussion" by the Commission of the jurisdictional issue in its Opinion No. 322, and it held that it lacked jurisdiction.

Moreover, on appeal, the Court of Appeals for the District of Columbia Circuit, in *Public Service Commission* v. *Federal Power Commission*, 287 F. 2d 143, specifically

discussed the jurisdictional issue in its decision, at several points, as follows (page 145):

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"The significance of this change in the form of the transaction, at least from the standpoint of the producer-sellers, is manifest. Sales of natural gas by an independent producer are subject to Commission regulation under Sections 4 and 5 of the Natural Gas Act. *Phillips Petroleum Co.* v. *State of Wisconsin*, 1954, 347 U.S. 672 S.Ct. 794, 98 L.Ed. 1035. But the Commission has been held to lack jurisdiction over gas leases. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 1949, 337 U.S. 498, 69 S.Ct. 1251, 93 L.Ed. 1499. . . ."

Further, the Court stated (page 146):

"It is of no importance here that the transactions by which Texas Eastern proposes to acquire the gas will themselves be, by virtue of a change in form, *beyond the regulatory control of the Commission*" (Italics supplied).

Despite this clear and unequivocal discussion and holding by the Court of Appeals in this case, the Commission now, in its Opinion No. 378, seeks to minimize the effect of and to discard the Court's finding that it lacks jurisdiction. The Commission erroneously states that the Court "without discussion" held that the Commission lacked jurisdiction. Furthermore, the Commission erroneously states that the jurisdictional question was "hardly considered" and was given but "passing mention" by the Commission and the Court (Opinion No. 378, page 5). The Commission thus attempts to repudiate the finding of the Court of Appeals in this very case by erroneously accusing the Court of not seriously considering the

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jurisdictional issue. If any further proof were needed that the question of jurisdiction over the transaction was considered in the case, a reference to the Commission's brief in the Court reveals that it repeatedly emphasized the Commission's lack of jurisdiction and cited authorities to support its position.

V.

The Commission erroneously concludes in Opinion No. 378 (page 7) that the instant proceeding is "distinguishable" from that involved in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498. That case is directly in point and constitutes a precedent which precludes the assertion of jurisdiction by the Commission over the transfer of leases here involved.

The Commission's first ground of purported distinction is the assertion that in the *Panhandle* case "the leases were undeveloped so that the transfer did not resemble a sale of gas as did the sale of developed leaseholds here" (page 7). The opinion of the Supreme Court in the *Panhandle* case clearly discloses that it was not based upon the narrow ground advanced by the Commission. Repeatedly throughout its opinion the Supreme Court referred to "gas leases" as such, and without distinction as to development or non-development,

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as an "essential part of production" and therefore beyond the Commission's jurisdiction because of the "production and gathering" exemption in Section 1(b) of the Natural Gas Act (337 U.S. at pages 505, 508, 513, 515). Moreover, it is equally clear from the Supreme Court's opinion that it was aware of the fact that exploration and development had taken place sufficiently to enable reserve estimates to

be made. Thus, the majority opinion of the Court recites that Panhandle "had included the acreage here involved as part of its gas reserves." Justice Black, in his dissenting opinion, stated that (337 U.S. at page 519):

> ". . . According to allegations in the Commission's complaint the respondent gas company has already received from its customers large sums of money from rates which reflected expenses incurred in maintaining these reserves and for exploration and development costs in relation to them."

An examination of the complaint which the Commission filed in the United States District Court demonstrates the extent to which exploration and development activities had actually taken place on the gas acreage involved in the *Panhandle* case. Thus, the Commission alleged in its complaint in the United States District Court (Paragraph XVII) that:

> "The delay rentals, renewal bonus payments and other exploration and development costs relating to aforesaid natural-gas leases included

> by the Commission in Panhandle's operating revenue deductions in the rate proceedings referred to in Paragraph (c) of the Commission's order of November 10, 1948, Exhibit 'B' hereto, amount to date to a sum in excess of $665,000."

The gas leases involved in the *Panhandle* case had been explored and developed sufficiently to result in an accepted gas reserve estimate of 700 billion cubic feet (337 U.S. at page 500). It stands to reason that an estimate of such a substantial reserve, comparable in magnitude to that in the Rayne Field, could not have been made or accepted without adequate exploration and development. Moreover, nowhere in any of the decisions in that case

was there any refutation of the fact that substantial "exploration and development costs" had been incurred prior to the transfer of the leases. The facts of the *Panhandle* case are precisely parallel with the instant one in this respect because the Commission has itself recognized and stated, in its Opinion No. 378, that the gas leases here involved "had been developed to an extent where reasonable estimates could be made as to the available reserves," (Opinion No. 378, page 6).

The second purported ground of distinction of the *Panhandle* case is the assertion by the Commission in Opinion No. 378 that "the reserves here are connected or are to be

connected to an interstate pipeline and are to be sold in interstate commerce while those in *Panhandle* were transferred to a corporation which subsequently sold them in intrastate commerce" (pages 7-8). Here again, the Commission obviously has groped for a purported distinction which has no substance whatever. The Supreme Court in the *Panhandle* case did not predicate its decision upon the circumstance that the gas which might be produced from the leases involved in that case was to be sold intrastate. Rather, the Court repeatedly emphasized that the Commission was prohibited by the provisions of the Natural Gas Act from interfering in the forbidden area of transfer of gas leases because gas leases and gas reserves are production facilities over which the Commission has no jurisdiction and because the transfer of gas leases and gas reserves is a production activity over which the Commission has no jurisdiction. Among other things, the Supreme Court said (337 U.S. at pages 513-514):

> "The District Court found as a fact, and the finding is undisputed by the Commission, that, 'It has been the practice in the natural gas industry for companies to trade freely in gas leases, and the Commission has

never heretofore asserted the right to regulate transfers of such leases.' Thus for over ten years the Commission has never claimed the right to regulate dealings in gas acreage.

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Failure to use such an important power for so long a time indicates to us that the Commission did not believe the power existed. In the light of that history we should not by an extravagant, even if abstractly possible, mode of interpretation push powers granted over transportation and rates so as to include production. If possible all sections of the Act must be reconciled so as to produce a symmetrical whole. We cannot attribute to Congress the intent to grant such far-reaching powers as implicit in the Act when that body has endeavored to be precise and explicit in defining the limits to the exercise of federal power." (footnotes omitted)

With the exception of this *Panhandle* case where the Commission was overruled, ever since the enactment of the Natural Gas Act in 1938 and ever since the decision of the Supreme Court in *Phillips* the Commission has never heretofore attempted to exercise jurisdiction over gas leases or the transfer of gas leases.

The third purported distinction of the *Panhandle* case relied upon by the Commission is the erroneous statement that "in the *Panhandle* case the gas reserves passed entirely out of the control of the seller while here the seller retained rights to oil, gas if found other than in particular strata, production payments for liquids, and management of the field" (Opinion No. 378, page 8). In the first place, Sun retained no rights whatsoever in the gas leasehold estates which it sold except only its mortgage lien to

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secure unpaid portions of the consideration. Sun retained no management rights over any of the gas leasehold estates

which it sold. In the second place, the Commission completely disregards the fact that the Supreme Court in the *Panhandle* case dealt with gas leases as production facilities and the transfer of gas leases as an activity of production. In addition, the Commission is factually incorrect when it asserts that in the *Panhandle* case the "gas reserves passed entirely out of the control of the seller." The Supreme Court's decision in that case recites that Panhandle retained "the option to purchase on or after January 1, 1965, all or part of the gas produced from this land" (337 U.S. at page 500). Thus, the *Panhandle* case involved a reservation of the right to purchase all or part of the gas produced representing a considerably more far-reaching retention of rights than the normal security for payment of consideration retained by Sun.

The Commission next purports to rely upon the Supreme Court's decision in the *Phillips* case (347 U.S. 672), apparently for the premise that the *Phillips* case was intended to overrule the prior *Panhandle* case. In reaching this conclusion, the Commission conveniently disregards the fact that the Supreme Court, when it decided the *Phillips* case, was well aware of its prior decision in the *Panhandle* case. Rather than overruling the latter case in any respect, it was cited

and relied upon by the Supreme Court when it decided *Phillips* (347 U.S. at page 678). Moreover, the Court of Appeals for the District of Columbia Circuit, when it decided the instant case, cited both the *Phillips* and *Panhandle* cases and dstinguished them when it held the Commission to be without jurisdiction over gas leases. The Court said (287 F. 2d 143 at page 145):

> ". . . Sales of natural gas by an independent producer are subject to Commission regulation under Sections 4 and 5 of the Natural Gas Act. *Phillips Petro-*

leum Co. v. *State of Wisconsin*, 1954, 347 U.S. 672, 74 S.Ct. 794, 98 L.Ed. 1035. But the Commission has been held to lack of jurisdiction over gas leases. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 1949, 337 U.S. 498, 69 S.Ct. 1251, 93 L.Ed. 1499...."

In this respect also the Commission has defied the decision of the Court of Appeals for the District of Columbia Circuit in this very case. We have noted the fact that the Commission has heretofore announced, in *Cities Service Gas Co.*, 26 F.P.C. 665, 666, that "we are not bound by the decision of one circuit." We are further amazed by the Commission's statement in *Lo-Vaca Gathering Co.*, 26 F.P.C. 606, 615, that, to the extent to which a court decision "may be inconsistent with the action we take here, we believe it was erroneously decided." However, this is the first instance we know of where the Commission has dared to defy the ruling of a Court of Appeals in the same case under consideration.

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The consequences and implications of this course of action, if permitted, would effectively destroy the rights of parties to court review and render the decisions of the courts meaningless.

The citation by the Commission of the cases of *Saturn Oil & Gas Co.* v. *Federal Power Commission*, 250 F. 2d 61 and *Continental Oil Co.* v. *Federal Power Commission*, 266 F. 2d 208, is equally without merit. In the *Saturn* case, the Court specifically gave effect to the doctrine of the *Panhandle* case when it stated (250 F. 2d at page 68):

"In *Interstate Natural Gas Co.* v. *Federal Power Commission* and *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.* the court recognized that effect must be given the production or gathering exemption. These cases and *Colorado Interstate Gas Co.*

v. *Federal Power Commission* are referred to in the Phillips decision as holding that the production or gathering exemption applies to the physical activities, facilities, and properties used in the production and gathering of natural gas and not to the business of production and gathering. Until there is a sale of the natural gas produced by such operations and installations in interstate commerce for resale, they are exempt. In the event of such a sale the jurisdiction of the Commission applies but only because of the sale and only to the extent that the Natural Gas Act confers jurisdiction."

In the *Continental* case the Court also gave effect to the *Panhandle* case stating that (266 F. 2d at page 210) "Although not specifically so providing, the language of this exemption [Section 1(b) exemption of production or gathering] has, as to other types of facilities, been held

to cover facilities of production or gathering. See *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company*, 337 U.S. 498, 504-505." The basis for the Court's decision was that "this record discloses that these are facilities for the sale of the gas that are not facilities of production" (266 F. 2d at page 211).

It is apparent that these cases confirmed the holding of the Supreme Court in the *Panhandle* case and in no manner constitute precedents for overruling that decision as the Commission has here attempted. Furthermore, the *Saturn* and *Continental* cases as authority for the Commission's position here are not applicable because there are no facilities retained or owned by Sun which could be or are used for the production of gas. Therefore, the Commission's attempted reliance upon these cases is refuted by the Commission's own statement in Opinion No. 378 (page 8) that in those cases," 'production' was complete before the point of sale." This language supports our own position, based

upon the factual situation here, where the leases and all facilities were sold by Sun before production for sale or transportation in interstate commerce occurred.

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VI.

The extent to which the Commission flagrantly and avowedly seeks, by its Opinion No. 378, to extend its jurisdiction beyond that conferred upon it by Congress in the Natural Gas Act is well illustrated by the conclusionary language on pages 8-9 of Opinion No. 378, where the Commission states:

> "Thus we conclude that a sale of gas in interstate commerce during the course of production and gathering is subject to our jurisdiction. Likewise, the sale of gas (or reserves) made under the circumstances here involved by the producers to Texas Eastern for transportation in its pipeline is a sale of gas for resale in interstate commerce and is subject to our jurisdiction."

The ommission from the first sentence and the first clause of the second sentence of the foregoing quotation of the words "for resale" when referring to the "sale of gas" or the "sale of gas (or reserves)" is especially significant. The Commission's reasoning seems to be that *any* sale of gas *should* be subject to its jurisdiction. Thus, it would disregard the requirement that a sale must be for resale to be subject to its jurisdiction. To attain this objective, forbidden by Congress and the Supreme Court, the Commission is now saying that any sale of *property* which contains gas in formation is subject to its jurisdiction. Moreover, by the insertion of the parenthetical words "or reserves" the

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Commission magnifies the illegality of the conclusion it has reached and directly defies the Supreme Court's opinion

in the *Panhandle* case where "gas leases" and "gas reserves" were considered synonymous and distinguished from sales for resale of natural gas. The boot-strap reasoning which the Commission engages in to justify its assertion of jurisdiction is apparent and is patently unlawful.

The Commssion next attempts to justify its assertion of jurisdiction on the ground of administrative expediency (Opinion No. 378, page 9). This ground, when it results in expanding the Commission's statutory jurisdiction, has been rejected by the Courts. See, for example, *Mississippi River Fuel Corp.* v. *Federal Power Commission*, 202 F. 2d 899. As stated by the Supreme Court in *Civil Aeronautics Board* v. *Delta Air Lines*, 367 U.S. 316, 322, "the fact is that the Board is entirely a creature of Congress and the determinative question is not what the Board thinks it should do but what Congress has said it can do." And as further stated by the Supreme Court in *Federal Power Commission* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 8, "However, respondents correctly point out that Congress, in enacting the Natural Gas Act, did not give the Commission comprehensive powers over every incident of gas production, transportation and sale. Rather, Congress was 'meticulous' only to invest the Commission with authority

over certain aspects of this field, leaving the residue for state regulation."

VII.

In its Opinion No. 378 (pages 5-6) the Commission indulges in an obvious misinterpretation of its order of July 14, 1961, reopening these proceedings (26 F.P.C. 167) issued after the decision of the Court of Appeals for the District of Columbia Circuit. This order reopening the proceedings first quotes from the next to the last paragraph of the Court's decision (287 F. 2d at page 146) where the

Court stated that "Two courses are open to the Commission." The first course, which contemplated clarification of the order under review, was rejected by the Commission. The second suggested course authorized the Commission to "reopen the record in the certificate proceeding to permit Texas Eastern to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity." In selecting the second course, the Commission stated that it would "reopen the record in this proceeding to afford Texas Eastern an opportunity to make that showing contemplated by the Court's aforesaid latter course."

Thus, the proceedings were reopened in accordance with the Court of Appeals decision. And this is the same Court of Appeals decision which held that the Commission lacked

jurisdiction over the transfer of leases insofar as the producers were concerned. In Opinion No. 378, however, the Commission has attempted to distort the language and intent of its order of reopening by seizing upon the language of the order which purported to define "but not necessarily limit" the issues as justification for considering the question of jurisdiction at this time. The necessary effect of the Commission's action is to accept the Court's decision only in part, and to disregard the portion of the Court's decision which, as we have demonstrated, clearly held the Commission to be without jurisdiction. The Commission also mentions the language in its order reopening the proceeding wherein it referred to whether the certificate should be "reissued in whole or in part." Certainly this language cannot legally be construed to authorize the Commission to follow the Court's decision only "in part" as the Commission does in Opinion No. 378.

VIII.

The Commission further seeks to justify its unlawful assumption of jurisdiction on the premise that "the producers transferred natural gas to Texas Eastern for resale by Texas Eastern in the interstate market." In this discussion (Opinion No. 378, pages 6-7) the Commission states that it should look beyond the "label" of the transaction to its essence, and that

"the effect resembles the ordinary sale of gas" because of certain "features" enumerated by the Commission. No one or all of the five asserted "resembling features" set forth by the Commission in any manner transform the assignment and conveyance here involved, which has already been fully consummated, into a contract for the sale of gas for resale, as attempted by the Commission. The transaction was a transfer of leases and not a sale for resale of natural gas. No amount of transmogrification by the Commission, such as attempted in Opinion No. 378, can convert the transaction into a sale for resale. The short answer to this discussion by the Commission is that if the transaction were a sale for resale there would be no occasion for the Commission to attempt to rescind the transaction and require a sale for resale contract to be entered into. In other portions of Opinion No. 378 (page 2) the Commission clearly recognizes the correct nature of the transaction and its later effort in Opinion No. 378 to convert it into a sale for resale serves only to emphasize the extent to which the Commission has been willing to go in order to enlarge its jurisdiction beyond that conferred by the Natural Gas Act.

IX.

On page 11 of Opinion No. 378, in its discussion under the heading "Disposition of These Proceedings" the

Commission recites that the "lease sale arrangement" should be rescinded" and a "new contract" be entered into. Assuming *arguendo*, that the Commission has jurisdiction over this transaction (which Sun denies), nevertheless, this requirement is patently unlawful. There is no provision in the Act which authorizes the Commission to direct that binding contracts, such as the Assignment and Conveyance, the Promissory Notes, and the Act of Mortgage and Pledge here involved, be rescinded and a "new contract" be entered into. The Commission has obviously attempted to assume powers not granted to it in the Natural Gas Act. *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 338.

Moreover, to compound its erroneous and unlawful assumption of power, the Commission is apparently attempting to make its decision retroactive, for it states, on page 11 of Opinion No. 378, that "The new contract, of course, would be effective from the delivery of the first gas from the Rayne Field and would be a substitute for the lease sale arrangement now proposed." It has been established beyond controversy that the Commission does not possess any power retroactively to fix rates such as is contemplated by the requirement that a "new contract" be entered into, *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 618; *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246.

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Furthermore, it has been held that any condition attached to a certificate issued by the Commission, such as attempted here to be imposed upon Texas Eastern, must be consonant with the Commission's authority under other provisions of the Act. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 508; *Central West Utility*

Co. v. *Federal Power Commission*, 247 F. 2d 306; *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 204 F. 2d 675, 680. Moreover, it has been judicially determined that in a Section 7 certificate proceeding the Commission must make findings, in accordance with the statute, of present or future, rather than past, public convenience and necessity, *City of Pittsburgh* v. *Federal Power Commission*, 237 F. 2d 741, 752; *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 236 F. 2d 289, 292.

Under the foregoing and other decisions, which could be cited, the Commission's attempt here to give retroactive effect to its findings is clearly invalid.

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X.

In addition to the ultimate errors in the findings and orders contained in Opinion No. 378 which are of such consequence as to merit the grouping for discussion hereinabove set forth, there are many errors of fact and conclusion which in total contribute to the erroneous action taken by the Commission.

On page 2, paragraph 1, the Commission errs in failing to state the gap in time between the cancellation of Sun's conventional contract of sale of gas and notice of withdrawal of application for certificate of public convenience and necessity on July 9, 1958, and the execution of the Lease Purchase Agreement on December 4, 1958, during which time no interest or claim or contractual right of any kind existed in Texas Eastern in Sun's properties, or the right to gas which might be produced therefrom.

By this means the erroneous conclusion is arrived at that there was an uninterrupted process by which Texas Eastern merely "amended its application to reflect a change in its plan for acquiring the Rayne Field gas." In fact, it abandoned its plan to buy gas, and bought leases instead.

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On page 2, paragraph 2, the Commission errs in stating that "The difference is solely in contractual arrangements." The difference is one of substance between acquiring

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a recognized interest in leases, a real right under the law of Louisiana, and an executory contract to receive personal property (gas) as delivered and to pay by the unit for such personal property after delivery.

On page 2, paragraph 2, it is error to state that "the facilities to be built by Texas Eastern would be essentially the same." Texas Eastern bought, and operates entirely by itself, a gathering system and central dehydration facilities and was required to provide extraction plant processing facilities, none of which were required of it under the former gas sales contracts.

On page 2, paragraph 2, it is error to state that there were only 16 promissory notes, rather than 16 for each seller of gas leasehold interests.

On page 2, paragraph 2, it is error to describe the production payment as "covering all liquids to be extracted from the gas", when in fact it was payable in money, *based on the value of liquids* extracted. Such liquids, being gas throughout the production process, belonged entirely to Texas Eastern when produced from the gas leaseholds, and were not retained by the sellers.

On page 2, paragraph 2, a serious error in referring to the Lease Sale Agreement is made by stating that it "is subject to certain conditions", implying that it is an existing

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and operative document. This error continues throughout Opinion No. 378, because of the Commission's failure to

recognize that it is nothing more than the familiar "Contract of Sale" by which land is uniformly bought and sold. It was merged by the Assignment and Conveyance on July 27, 1959, and has no present existence. The owner of land holds under his deed, not the preliminary contract of sales. Perhaps the Commission finds it easier to think of cancelling an executory document than one executed over four years ago, but this does not make it so.

On page 2, paragraph 3, the Commission errs in stating that "Based on total recoverable reserves of 990,000 MMcf Texas Eastern acquired approximately 79 percent under the original leasehold acquisition transaction in 1958."

Since Texas Eastern bought leasehold interests, it got the right to produce whatever the leases contained, whether 500 billion Mcf or one trillion and 500 billion Mcf. Neither quantity, estimated or produced, would alter the fact that Texas Eastern acquired the right to produce 100 per cent of the gas covered by each lease, and the total reserves so covered were estimated at 95 per cent of the reserves in the sale area.

The refusal of the Commission to recognize the substantial difference between a concept of "reserves" as

"gas in place", and on the other hand as lease rights to produce gas, leads to this error. The first concept is legally impossible in Louisiana. No one can own gas in place. Conversely, a lease grants the right to produce *all* the gas one can, including that on which royalty must be paid. There is no "royalty gas" owned as such either in place, or even after production under the typical lease. The lease owner owes royalty in money, based on the value of the royalty fraction of the total.

Thus, the fact is that the lease interests assigned by the four major parties covered over 95 per cent of the esti-

mated reserves. Those of the minority interest owners, such as H. E. Dishman, most of which were acquired by Texas Eastern, were estimated to cover over 4 per cent. In computing consideration for the leases only, since the royalties were only required to be paid when gas was produced later by Texas Eastern, the royalty fraction to be attributed to total reserves was deducted. In the case of Continental, Sun, Marr and General Crude, the royalty fraction totalled 16 and a fraction per cent, which when combined with the so-called "working interest only" figure of 79 plus per cent correctly shows what the lease interest really covered, and Texas Eastern rally bought, namely, the right to produce over 95 per cent of the gas in the leaseholds.

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On page 3, the first incomplete paragraph, the Commission errs in construing the leaseholds purchased to cover only 81.5 per cent of the reserves. They cover nearly 100 percent. It is correct that these leases carry a royalty burden equal to approximately 18 per cent of the reserves. However, the right to this gas as produced inheres in the leaseholds. Texas Eastern does not buy or "pay for it." It accounts in cash, based on a judgment of market value under the lease terms, which may be more or less than 22.6 cents per Mcf through the life of production.

On page 4, paragraph 2, the Commission errs to the extent that its reference to the Examiner's initial decision of June 29, 1962, may imply a finding in Opinion No. 378 that there was a dedication of the Rayne Field gas to the interstate market as of April 22, 1957. No gas was produced by anyone for delivery to the interstate market before August, 1958 and then only by Texas Eastern.

On page 4, the third complete paragraph, the Commission erroneously refers loosely to an issue of jurisdiction over "the lease sale arrangement." As demonstrated

above, this is not descriptive of any identifiable document or set of documents. The operative instruments are an Assignment and Conveyance from Sun to Louisiana Gas. Notes from Louisiana

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Gas to Sun, Act of Mortgage and Pledge from Louisiana Gas to Sun, and Conveyance from Louisiana Gas to Texas Eastern. It is prejudicial and lacking in specification adequate to inform Sun or a reviewing court as to the meaning of the Commission to refer to an "arrangement." The purpost of the Commission to use this inexactitude to color the characterization it gives a normal mineral rights transaction becomes evident as it proceeds.

On page 4, last paragraph, it is error to hold as to Sun that "what was to be a sale of gas has been converted into sale of leases." The evidence is undisputed that Sun cancelled its contract and withdrew its application for certificate *unconditionally* on July 9, 1958, without any strings on it or Texas Eastern. Either party was free to walk away for five months thereafter. Texas Eastern's application to reopen in September, 1958, was only in a fond hope of buying Sun's leases. It had no assurances that it could buy from Sun either leases or gas on that date.

Additionally, the term "conversion" is without specific meaning, beyond the continued and unjustified effort of the Commission to choose terms of coloration to suggest an undisclosed commitment to tie the gas sale to the lease sale. There was none, and there is no evidence of such.

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On page 4, last paragraph, Sun objects to the error in the Commission's language purporting to cast aside any evidence of form as being of no substance, saying it is immaterial "whether technically in the form of leasehold

transaction or otherwise." This reasoning, if unchallenged, would be equally appropriate to an outright deed to lands containing gas, and to the familiar oil, gas and mineral leases thereof. The forms of real property and mineral law have established meaning in substance which the Commission cannot brush so lightly aside.

On page 6, paragraph 2, the Commission errs in referring to "the in-place sale of the Rayne Field gas to Texas Eastern." There is no legally recognizable sale of gas in place under Louisiana law. One may only own the land or the right to produce minerals therefrom (as by a lease), or one may own gas after severance by production. No one can own, or sell, gas in place. This error is materially prejudicial as part of the Commission stratagem to shift words in order to make a lease assignment look like a gas sale.

On page 6, paragraph 2, the Commission errs in its argument that any conveyance of property which may be capable of producing gas must be regulated because it assumes the local law does not so regulate. The "gap" argument, so stated, would apply equally to a sale by simple deed, to the oil and

gas lease, to a sale of royalty and to a mortgage. All these transactions are subject to State and local law and cannot, as expert testimony in this case reflects, be arranged at the whim of parties. There is no evidence of any limitation on the right of the state to employ other regulation on transfers of interest in land within its borders. No "gap" is shown, nor any conflict. The two sovereign's powers join precisely here.

On page 6, paragraph 3, the Commission errs in saying that this gas, still in the formation, "was sold in bulk." Gas cannot be sold either in bulk or by the unit while unproduced, under the law of Louisiana. If sold after severance, the only way it could be sold would be on a per Mcf

or other unit basis. If unproduced, the only way to obtain the gas is to buy the land, or the leasehold right in land permitting production from the land. The term "bulk" then could have only the phantom meaning of a body of gaseous vapor for which there was no container. It is as impossible under the laws of physics as under the Code Napoleon. The truly prejudicial error is the laying of the foundation in semantics for the slide from "bulk" to "wholsale" at a later point, where the meaning of the latter term is to be given a reincarnation never intended in the Natural Gas Act.

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On page 7, numbered paragraph 4, it is error to say that the management agreement provides for Continental to operate "the field," when it is only the assigned leasehold interests to which it applies. Functions of parties Seller in the remainder of the field are not involved. Further, as pointed out before, Texas Eastern itself operates the gathering system and central dehydration facilities.

On page 7, numbered paragraph 5, the Commission errs in saying Texas Eastern is not bound by the principal obligation. It is not liable personally, but it holds its leases securely bound by note indebtedness and mortgage liens, subject to which it purchased from Louisiana Gas.

On page 8, first complete paragraph, the Commission erred in its interpretation of *Phillips* as referring to "wholesales of natural gas in interstate commerce" as including the instant transaction, regardless of the *Panhandle* case, on the theory that this is a "bulk" sale, which is assumed to be synonymous with a "wholesale." As used in *Phillips* and under the Act, the term "wholesale" relates only to the "sale for resale" provisions.

On page 10, first complete paragraph, there is prejudicial error in the statement that "What is objectionable here is the attempt to disguise a transaction which in effect is a sale of gas by casting it in the form of a sale of

leases * * *." There is no evidence to support this charge of devious purpose. All the evidence is that this transaction has been exposed for the public view since 1958. No single concealed purpose, sub-rosa action, or misrepresentation beneath the facts shown in the documents exists. Unless one accepts the evident Commission view that it should regulate all natural gas properties contra *Panhandle*, there is no "disguise" involved in refusing to sell gas in interstate commerce. There is no questionable device presumed when one sells his leases in preference to selling gas. If there is, a "natural gas company" now is anyone owning land under which there may be gas. He cannot even turn away by trying to sell the land. This is a "disguise" only in terms of an unwarranted grab for ungranted power by the administrative agency.

On page 11, finding (1), it is erroneous to find that Sun is a producer of natural gas and a natural gas company "by participation in the Lease Sale Agreement" for reasons set forth heretofore.

On page 11, finding (2), the Commission wrongfully finds that "The Lease Sale Agreement referred to above represents sales of natural gas for resale in interstate commerce," for reasons discussed above.

On page 12, findings (7), the Commission erroneously describes Sun and other sellers as "suppliers of gas," for reasons fully presented in this application.

In the Concurring Opinion, page 1, paragraph 2, it is erroneous to find that this transaction is "a sale of a relatively well defined block of gas" since such a block cannot be physically capable of sale except it be in its container, the formations subject to the gas leases. In that form, the law of Louisiana prevents any sale of gas. Only the con-

tainer, by sale of land, or the right to produce, by lease, may be sold.

XI.

The Commission erred in disregarding the determination of the Internal Revenue Service in Ruling dated January 13, 1959, that the sales in the form described in the Lease Sale Agreement were of leasehold rights subject to tax treatment as capital gains rather than sales of gas subject to treatment as normal income, since such action of the Internal Revenue Service as a representative of the United States was binding upon the Commissioners as other officers of the Government under the doctrine of *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381.

WHEREFORE, for all of the foregoing reasons, Sun requests the Commission to grant this application for rehearing

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and to reverse and set aside its Opinion No. 378 and accompanying order. If the Commission should not grant this application, Sun requests that the Commission stay Opinion No. 378 and the accompanying order pending judicial review.

Respectfully submitted

SUN OIL COMPANY

/s/ ROBERT E. MAY
Robert E. May,
Its Attorney

JOHN A. WARD, III
PHILLIP D. ENDOM
1608 Walnut Street
Philadelphia 3, Pennsylvania

JOINER CARTWRIGHT
HERF M. WEINERT
P. O. Box 2831
Beaumont, Texas

ROBERT E. MAY
May, Shannon and Morley
1700 K Street, N.W.
Washington 6, D.C.

Attorneys for Sun Oil Company

MARTIN A. ROW
P. O. Box 2880
Dallas, Texas
Of Counsel

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DISTRICT OF COLUMBIA: SS.

Robert E. May, being first duly sworn, deposes and says that he is an attorney for Sun Oil Company; that as such he has signed the foregoing "Application for Rehearing and Stay by Sun Oil Company" for and on behalf of said Company; that he is authorized so to do; that he has read said Application and is familiar with the contents thereof; and that the matters and things therein set forth are true and correct to the best of his knowledge, information and belief.

/s/ ROBERT E. MAY
Robert E. May

Subscribed and sworn to before me, a Notary Public, this 6th day of March, 1963.

/s/ THOMAS C. EVANS
Thomas C. Evans
Notary Public

[SEAL]

My Commission expire September 14, 1965.

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CERTIFICATE OF SERVICE

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket No. G-12446

TEXAS EASTERN TRANSMISSION CORPORATION

Docket No. G-12447

TEXAS EASTERN TRANSMISSION CORPORATION

Docket No. G-12432

CONTINENTAL OIL COMPANY

Application of Continental Oil Company For Rehearing

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Comes now Continental Oil Company, and pursuant to Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules of Practice and Procedure, hereby applies for a rehearing in respect of the Commission's Opinion No. 378 (including the Further Findings and Order accompanying said Opinion) issued February 6, 1963.

The grounds for this Application and the errors which Continental asserts were made by the Commission are hereinafter set forth.

For brevity's sake, the following contracted names will generally be used herein:

Continental Oil Company—"Continental"
Sun Oil Company—"Sun"
M. H. Marr—"Marr"
General Crude Oil Company—"General Crude"

The foregoing, collectively—"Continental et al." or "Assignors"
Texas Eastern Transmission Corporation and/or Louisiana Gas Corporation—"Texas Eastern"
Internal Revenue Service—"IRS"

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INTRODUCTION

In these United States of America, there is nothing wrong in a private citizen's framing his business transactions in such lawful way as will avoid unfavorable governmental impositions. Steps to this end are taken every day, for instance, to minimize tax liabilities. In this very case, Continental et al. conditioned their agreement to assign their Rayne Field leasehold rights and interests to Texas Eastern upon the issuance of an IRS ruling that the Assignors' profits from the transaction would be taxed at the comparatively low rate applicable to long term capital gains. IRS duly issued such a ruling in January 1959. It is unthinkable that IRS could now, four years later, legally revoke its ruling because it has changed its mind and feels that Continental et al. should have sold gas instead of real estate and should thereby have subjected themselves to higher tax liabilities.

It is equally unthinkable that this Commission may now —also four years later—legally revoke its prior ruling (which has since been confirmed by an appellate court), because the Commission has changed its mind and wants to expand its powers into areas forbidden to it by the Congress and the Supreme Court of the United States.

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The Panhandle Case

Another classic example of perfectly proper and lawful avoidance of governmental impositions was presented in

the case which is the fountainhead of the legal doctrine that is controlling here: *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949). The situation facing Panhandle Eastern Pipe Line Company ("Panhandle") in 1948, and how it thereafter succeeded lawfully to avoid the hazards of continuing FPC rate control, are summarized below.

Panhandle owned 97,000 acres of gas leaseholds in the lush Hugoton Field in Kansas, which acreage had cost Panhandle very little. The leases were in areas sufficiently well proven to make possible an estimate that Panhandle's holdings covered approximately 700 billion cubic feet of natural gas—about 12% of Panhandle's total gas reserves.

To secure FPC certificates of public convenience and necessity for construction of pipeline facilities, Panhandle represented that gas from its Hugoton Field leases would be available as a source of gas supply for those facilities.

Some years earlier, the FPC had prevailed upon the Supreme Court to hold, in *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U.S. 581 (1945), that an interstate gas transmission company must include its gas producing properties in its rate base at cost and can realize

a return on those assets of only around 6% per annum. This meant that Colorado Interstate practically had to give its gas away at a fraction of a cent per Mcf. Two years later, in *Interstate Gas Co.* v. *Federal Power Commission*, 331 U.S. 682 (1947), FPC persuaded the Supreme Court to extend the rule in *Colorado Interstate* to any gas-producing "affiliate" of an interstate gas transmission company.

Panhandle had no difficulty reading the handwriting on the wall: If it ever produced gas from its Hugoton Field leases and transported that gas in interstate commerce, it would fall into the same trap that had caught Colorado Interstate.

So Panhandle adopted and implemented a perfectly lawful program: Panhandle organized a subsidiary, Hugoton Production Company ("Hugoton") and transferred to that subsidiary Panhandle's 97,000 acres of Hugoton Field lease-holds, together with some working capital. In exchange, Panhandle received all of Hugoton's stock plus an option to purchase, on and after January 1, 1965, all or part of the gas produced from those lands.

Simultaneously with the lease transfer, Panhandle declared a dividend of Hugoton stock to its (Panhandle's) stockholders. Thereby, Panhandle was able to preserve for its owners the full market value of the Hugoton Field leases, which value the FPC would, in effect, have confiscated if it were able to obtain jurisdiction over the lease transfer transaction.

FPC objected and sought to enjoin this lawful means of avoiding its jurisdiction; but to no avail. The Supreme Court scrutinized the transaction with great care, but could find nothing in the Natural Gas Act which endows the FPC with jurisdiction over transfers of mineral leases.

We have dealt with the *Panhandle* case at some length in this Introduction because the underlying circumstances there are in many ways parallel with those presented here.

Background Facts in This Case

The Rayne Field in Acadia Parish, Louisiana, was discovered by Continental in 1953. It turned out to be a major gas-condensate find; total recoverable gas reserves are estimated to be about a trillion cubic feet. Continental et al. owned leases covering most of the productive area.

In June 1954, shortly after the Rayne Field was discovered, the Supreme Court handed down its historic decision in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672. Continental et al. were unwilling to throw their exceed-

ingly valuable leasehold interests in the Rayne Field into the chaotic maelstrom created by *Phillips;* so they did nothing during the next two and a half years which could in any way subject any gas produced from that field to FPC jurisdiction.

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After many months, the hectic aftermath of *Phillips* subsided. It then began to appear that FPC was genuinely striving to be fair in certifying new contracts for sales of gas. Acordingly, on February 1, 1957, Continental et al. entered into tentative contracts to sell gas from the Rayne Field to Texas Eastern. Appropriate applications for certification were thereupon filed with the Commission by Continental et al. and by Texas Eastern.

But in 1958, before the Commission took action on the pending certificate applications, the Court of Appeals for the Third Circuit upset the gas sales contracts in the *"CATCO"* case, *Public Service Commission of New York* v. *Federal Power Commission,* 257 F. 2d 717; and it seemed likely that this result would be sustained by the Supreme Court, as, indeed, it was in 1959 *sub nom. Atlantic Refining Co.* v. *Public Service Commission,* 360 U.S. 378. That was enough for Continental et al. Just as Panhandle had been able to read the handwriting on the wall in 1948, so Continental et al. were able to read it ten years later. They rescinded their tentative gas-sales contracts with Texas Eastern—as they had the legal right to do—and filed notices of withdrawal of their certificate applications pending before, but not yet acted upon by, the FPC.

Still, Texas Eastern and its customers and their customers were sorely in need of more gas. The Rayne Field was the largest uncommitted gas field in southern Louisiana,

and it lay only 22 miles from Texas Eastern's main trunkline system. So Texas Eastern prudently offered to buy outright the Rayne Field leases owned by Continental et al.; and, after protracted, arms-length negotiations, the terms of such a transaction were agreed upon.

There was nothing furtive or wicked, either ethically or legally, about this straightforward business transaction. The effect, of course, would be that FPC could exercise no jurisdiction over the Assignors' transfer of leases, because that was foreclosed by the form and substance of the transaction and by the Supreme Court's determination in the *Panhandle* case. The risk of any subsequent FPC regulatory aberration was assumed by Texas Eastern alone; the Assignors, once they had divested themselves of their leasehold interest, would be completely out of the picture. Thereby, the Assignors were lawfully able to preserve the market value of their valuable leases, just as Panhandle had been able to do with the blessings of the Supreme Court.

The Commission's Opinion No. 378

As we shall demonstrate in the body of this Application for Rehearing, the Commission's Opinion No. 378, issued February 6, 1963, cannot stand because it:

—Ignored the property and mineral laws of the State of Louisiana;

—Went counter to the IRS ruling of January 13, 1959, in violation of the rule of res judicata;.

—Reversed FPC Presiding Examiner Frazee's correct Decision of June 29, 1962, on the jurisdictional question;

—Repudiated the Commission's own prior Opinion No. 322 of June 23, 1959;

—Repudiated the Commission's own Brief of July 11, 1960, filed in the Court of Appeals;

—Overruled the Court of Appeals' Opinion of December 8, 1960, and disobeyed that appellate court's remand;

—Overruled the U.S. Supreme Court's 1949 decision in the *Panhandle* case;

—Rewrote the Natural Gas Act of 1938 without Congressional sanction;

—Redetermined issues which were precluded from being reconsidered by the established law of the case;

—Determined issues against Continental et al., *in absentia* and without notice, in violation of the Due Process Clause of the Fifth Amendment to the Constitution of the United States;

—Assumed authority, which no court (let alone an administrative agency) possesses, to compel parties to rescind a lawful, binding, and consummated transaction; and

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—Directed Continental et al. and Texas Eastern to agree upon and enter into completely new and different contractual relationships, which direction is impossible to comply with, is a legal nullity, and is beyond the authority of this Commission or of any other administrative or judicial tribunal.

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I.

The Commission Has No Jurisdiction Over the Sale by Continental et al. to Texas Eastern of Leasehold Rights and Interests in the Rayne Field.

A. Relevant Facts

By Lease Sale Agreement dated December 4, 1958, Continental et al. agreed to sell to Texas Eastern, and it agreed

to buy, leasehold rights and interests owned by Continental et al. in the Rayne Field, Acadia Parish, Louisiana. The stipulated sale price was approximately $134.4 million, of which $12.4 million was to be paid in cash at the closing, the remainder to be evidenced by four series of promissory notes totaling $122.0 million, payable in monthly installments over a period of sixteen years.

The agreed shares of the Assignors in the proceeds of the sale were approximately as follows: Continental 55.9%, Sun 31.7%, Marr 8.4% and General Crude 4.0%.

The sale was made subject to four conditions, all of which were subsequently fulfilled:

(1) Texas Eastern's approval of Assignors' titles.

(2) Assignors' receiving an IRS ruling that gains realized by Assignors from the transaction would be considered as long-term capital gains for income tax purposes. IRS issued such a ruling on January 13, 1959.

and in so doing necessarily found the proposed transaction to be a *bona fide* sale of realty interests which Assignors had owned for more than six months.

(3) Issuance by the FPC of such satisfactory certificate of public convenience and necessity as Texas Eastern might require to enable it to construct and operate the necessary facilities (a 22-mile pipeline spur and a compressor station) to take gas from the Rayne Field. Such certification was granted to Texas Eastern in the Commission's Order No. 322, issued June 23, 1959.

(4) The Assignors' obtaining unconditional dismissals or permitted withdrawals of FPC certification proceedings with respect to conventional gas sales arrangements which the parties had proposed early in 1957, but which they had thereafter can-

celled and abandoned. Continental's notice of withdrawal was permitted in the Commission's Opinion No. 322 of June 23, 1959. Withdrawals by Sun, Marr and General Crude had been permitted several months earlier.

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On July 27, 1959, the lease sale transaction was closed. Essential features of the tranaction are outlined below.

An Assignment and Conveyance was executed, delivered and duly recorded. Therein, the Assignors assigned and conveyed to Texas Eastern extensive leasehold rights and interests in the Rayne Field. Such rights and interests were listed in an exhibit to the Assignment and Conveyance, and the mere enumeration of them covers 60 printed pages. Also transferred to Texas Eastern were Assignors' facilities and equipment pertaining to the Rayne Field operations, and the inventory of those items runs on for an additional 35 printed pages.

In the Assignment and Conveyance, the Assignors reserved:

(1) Deep rights below the base of the Nodosaria "A" sand, the deepest horizon (13,650 to 13,890 feet below the surface) that had, up to then, proven productive in the Rayne Field.

(2) Oil and other minerals, except gas and condensate.

(3) A limited production payment payable out of liquids recovered from the raw gas production of the properties until specified

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quantities of gas have been produced, whereupon the production payment obligation ceases.

At the closing on July 27, 1959, Texas Eastern made the $12.4 million down payment and delivered to each Assignor the 16 promissory notes to which it or he was entitled,

evidencing, in the aggregate, the $122.0 million unpaid balance of the purchase price.

The promissory notes delivered to each Assignor were secured by an Act of Mortgage and Pledge of the assets Texas Eastern had acquired. These instruments were also duly recorded in accordance with Louisiana law.

A Management Agreement was entered into, providing for management of the Rayne Field operations by Continental as agent for Texas Eastern. The reasons for this arrangement were set out in the preambles to the instrument: Continental had, as Operator, developed the Rayne Field; Texas Eastern had no experience in such operations in that area; "and due to extremely high pressure in the reservoirs and the hazards encountered by an inexperienced Operator, [Texas Eastern] has acquired such leasehold interests from [Continental et al.] with the understanding that it could obtain the experienced and capable management of such properties by Continental."

Since July 27, 1959, Texas Eastern has purchased additional leasehold rights and interests in the Rayne Field

from owners other than Continental et al. on substantially similar terms.

The lease sale transaction of July 27, 1959, has to date been carried out by the parties in compliance with their contractual obligations.

In August 1959 Texas Eastern connected the Rayne Field to its system and has since withdrawn over 165 billion cubic feet of gas.

Continental et al. have received the payments due them on their promissory notes in an aggregate sum of approximately $24.6 million, so that, inclusive of the $12.4 million down payment, upwards of 27.5% of the total purchase price has now been paid. The Assignors' gains from their

sale of leasehold rights and interests have been accorded long-term capital gain treatment by the IRS in consonance with its tax ruling of January 13, 1959.

B. The Legal Effect of the Transaction

There can be no question that the transaction of July 27, 1959, effectively divested the Assignors of their Rayne Field leasehold rights and interests and lodged those rights and interests in Texas Eastern. Continental et al. did not sell natural gas; they sold only rights and interests in realty.

In Louisiana, as elsewhere, an oil and gas lease vests the holder thereof with the exclusive right to go

upon the land covered by the lease; there to explore for and produce oil and gas; and to remove and dispose of any such production. Such a lease does not convey title to any subsurface minerals or to any oil or gas "in bulk" or "in place"; nor does the lessee thereby acquire any such commodity as oil or gas.

Frost-Johnson Lumber Co. v. *Salling's Heirs,* 150 La. 756, 91 So. 207 (1920);

Wright v. *Imperial Oil & Gas Products Co.,* 177 La. 482, 148 So. 685 (1933);

Dixon v. *American Liberty Oil Co.,* 226 La. 911, 77 So. 2d 533 (1955);

Regan v. *Murphy,* 235 La. 529, 105 So. 2d 210 (1958);

Elkins v. *Townsend,* 296 F. 2d 172 (5th Cir. 1961);

McCoy v. *United Gas Public Service Co.,* 57 F. Supp. 444 (D.C. W.D. La., 1932);

Williams and Meyers, Oil and Gas Law (1959 ed.), S 202.1, Vol. 1, p. 21.

Oil and gas can become commodities, and therefore a subject of commerce, only after they have been extracted from the earth and reduced to possession. *Pennsylvania* v. *West Virginia*, 262 U.S. 553, 586 (1923).

Section 1105 of Title 9 of the Louisiana Revised Statutes classifies oil and gas leases as "real rights and incorporeal immovable property" and provides that owners of oil and gas leases "shall have the benefit of all laws relating to the owners of real rights in immovable property or real estate."

A Louisiana oil and gas lease, if duly recorded, is binding as to third parties (La. R.S. 9:2721). The

owner of such a lease may underlease or cede his lease to another (La. Civ. Code, Tit. IX, Art. 2725), and acts of transfer of such leases, when duly recorded, accord protection to the subsequent holder (Id. Tit. IV, Arts. 2251-2266).

Thus, in our case, when Continental et al, executed and delivered the Assignment and Conveyance of July 27, 1959, and the same was duly recorded, they divested themselves of all leasehold rights and interests covered by the instrument, and those rights and interests became vested in Texas Eastern. The latter thereupon acquired "real rights and incorporeal immovable property" and became entitled to "the benefit of all laws relating to the owners of real rights in immovable property or real estate"; but Texas Eastern did not thereby acquire a single cubic foot of natural gas, and Continental et al. did not thereby sell any.

The term "natural gas" is expressly defined in Sec. 2(5) of the Natural Gas Act as "either natural gas unmixed, or any mixture of natural and artificial gas." The normal meaning of "natural gas" has been held to be "a mixture of gaseous hydrocarbons found in nature." *Deep South*

Oil Co. v. *FPC*, 247 F. 2d 822, 888 (5th Cir. 1957) cert. den. *sub norm.*; *Humble Oil & Refining Co.* v. *FPC*, 355 U.S. 930 (1958).

Very little perception is required to understand that "real rights and incorporeal immovable property" on the one

hand, and "a mixture of gaseous hydrocarbons found in nature" on the other, are entirely different things.

C. It Is Firmly Established That The Commission Possesses No Jurisdiction Over Purchases Or Sales of Leasehold Interests

1. *Judicial decisions*

The leading case is *FPC* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498. The sole problem there considered was (337 U.S. at 499):

> ". . . a problem involving the scope of the power over gas reserves of a natural-gas company given to the Federal Power Commission by the Natural Gas Act . . . Specifically the question to be decided is whether a natural-gas company, subject to the Act, may sell the leases covering an estimated twelve per-cent of its total gas reserves without the approval and contrary to an order of the Commission."

The Supreme Court held that the sale of leaseholds by a natural-gas company was not a sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, but was an "activity related to the production and gathering of natural gas and beyond the coverage of the Act." In holding that the transfer of leasehold interests by natural-gas companies came within the production exemption of Section 1(b) of the Act, the Court noted that

"the Natural Gas Act did not envisage Federal regulation of the entire natural-

gas field to the limit of constitutional power"* and then stated (337 U.S. at pp. 504-505, footnotes omitted):

> "The Commission seeks to distinguish between the activities of production and gathering, such as drilling, spacing wells, or collecting gas, and the facilities such as reserves and gas leases used therefor and argues that only the former were excluded from the coverage of the Act. In support of this position it is pointed out that the section specifically exempts both the local distribution and the facilities used therefor while it makes no mention of the facilities used for production or gathering. In the face of the unambiguous language of the Act and its legislative background, we cannot ascribe such a narrow meaning to the words, 'the production or gathering of natural gas.' In Colorado Interstate Gas Co. v. Federal Power Commission, 324 U.S. 581, 603, 89 L.ed. 1206, 1223, 65 S. Ct. 829, we said that this phrase comprehended the producing properties and gathering facilities of a natural gas company. *We now adhere to this natural and clear meaning of the words and their obvious expression of congressional intent. Of course leases are an essential part of production.*" (Emphasis added)

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* In *FPC* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 8 (1961), the Court noted:

> ", . . Congress, in enacting the Natural Gas Act, did not give the Commission comprehensive powers over every incident of gas production, transportation and sale. Rather, Congress was 'meticulous' only to invest the Commission with authority over certain aspects of this field, leaving the residue for state regulation."

The Court reviewed the legislative history of the Natural Gas Act** and rejected the Commission's contention that it was

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vested with jurisdiction over the transfer of leases by Sections 4, 5 and 7 of the Act, stating (337 U.S. at pp. 508-515, footnotes omitted):

> "Sections 4, 5 and 7 do not concern the producing or gathering of natural gas; rather they have reference to the interstate sale and transportation of gas and are so limited by their express terms.
>
> ---
>
> "To accept these arguments springing from power to allow interstate service, fix rates and control abandonment would establish wide control by the Federal Power Commission over the production and gathering of gas. It would invite expansion of power into other phases of the forbidden area. It would be an assumption of powers specifically denied the Commission by the words of the Act as explained in the report and on the floor of both Houses of Congress. The legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states.
>
> "The District Court found as a fact, and the finding is undisputed by the Commission, that, 'It has been

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** The pertinent legislative history of the Act is set forth in the footnotes at 337 U.S. 509-516. In addition, a comprehensive review of the bills from 1935 through 1938 which led to the passage of the Act appears in 44 Georgetown Law Journal, pp. 695-723 (1956). As there noted, during Congressional consideration in 1935, all references to "production" were systematically and completely eliminated from the jurisdictional provisions of the proposed bill to regulate natural gas (Title III) but similar provisions as to the generation of electric energy remained in the bill (Title II) which ultimately became the Federal Power Act. "It can hardly be supposed that this deletion was meaningless." 44 Georgetown Law Journal 700-701.

the practice in the natural gas industry for companies to trade freely in gas leases, and the Commission has never heretofore asserted the right to regulate transfer of such leases.' Thus for over ten years the Commission has never claimed the right to regulate dealings in gas acreage. Failure to use such an important power for so long a time indicates to us that the Commission did not believe the power existed. In the light of that history we should not by an extravagant, even if abstractly possible, mode of interpretation push powers granted over transportation and rates so as to include production. If possible all sections of the Act must be reconciled so as to produce a symmetrical whole. We cannot attribute to Congress the intent to grant such far-reaching powers as implicit in the Act when that body has endeavored to be precise and explicit in defining the limits to the exercise of federal power."

During the fourteen years since the rendition of the *Panhandle* decision, its authority has never been dimmed or doubted by any court. *Panhandle* has been consistently

followed or cited with approval in the following, among other, subsequent cases:

Phillips Petroleum Co. v. *State of Wisconsin*, 347 U.S. 672, 678 (1954), affirming *State of Wisconsin* v. *PFC*, 205 F. 2d 706, 711 (D. C. Cir. 1953);

Deep South Oil Co. of Texas v. *PFC*, 247 F. 2d 882, 893 (5th Cir. 1957);

Saturn Oil & Gas Co. v. *FPC*, 250 F. 2d 61, 68 (10th Cir. 1957);

Continental Oil Co. v. *FPC*, 266 F. 2d 208, 210 (5th Cir. 1959);

Public Service Commission of the State of New York v. *FPC*, 287 F. 2d 143, 145, 146 (D. C. Cir. 1960);

Hunt v. *FPC*. 306 F. 2d 334, 345 (5th Cir. 1962);

FPC v. *J. M. Huber Corp.*, 133 F. Supp. 479, 484 (D. C. N.J. 1955);

Emerald Coal & Coke Co. v. *Equitable Gas Co.*, 378 Pa. 107 A. 2d 734, 737 (1954).

2. *FPC actions*

Up to February 6, 1963, the Commission likewise consistently recognized its utter lack of jurisdiction over the sale, purchase or transfer of leasehold interests by natural-gas companies.

As pointed out by the Supreme Court in *Panhandle*, "for over ten years [prior to 1949] the Commission has never claimed the right to regulate dealings in gas acreage." (337 U.S. at p. 513.) And at the conclusion of its *Panhandle* opinion, the Supreme Court told the Commission exactly what it could do if it wished to obtain such authority (337 U.S. at pp. 515-516):

> "If the Commission is of the opinion that it should have power to control the disposition of leases by natural-gas companies, it is authorized to call the attention of Congress to that fact."

The Commission has done just that, not simply once, but once each year for the past twelve years. In each of its Annual Reports to Congress for the years 1951 through 1962, the Commission has advocated an amendment to Section 7 of the Natural Gas Act which would vest FPC with jurisdiction over transfers of leaseholds by natural-gas companies.* Congress has turned a deaf ear to this full dozen of pleas for the very power which the Commission clearly does not possess, but which it suddenly decided to usurp, if it could, in this case.

"Great weight" must be given to an agency's consistent interpretation of the law it administers, especially where

the agency has sought to have the law amended, but Congress has declined to do so and has thereby acquiesced in the agency's historical interpretation.

United States v. *Bergh*, 352 U.S. 40, 47 (1956);

Gas Service Company v. *Federal Power Commission*, 282 F. 2d 496, 499 (D. C. Cir. 1960);

Mississippi Valley Gas Co. v. *Federal Power Commission*, 294 F. 2d 588, 592 (5th Cir. 1961).

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D. The Commission's Actions in These Proceedings with Respect to Jurisdiction Over the Rayne Field Lease Sale

The Commission's assertion, on February 6, 1963, of jurisdictional authority over the sale of leasehold rights and interests in the Rayne Field was all the more surprising because such assertion came as a complete afterthought.

The Commission was apprised of the parties' intention to enter into the leasehold sale transaction shortly after it was agreed to on December 4, 1958. From that time on until February 6, 1963—a period of more than four years—every step the Commission took in these proceedings was diametrically contrary to the position it now embraces in Opinion No. 378.

A filing made by Texas Eastern in these proceedings on December 15, 1958, advised the Commission that Texas Eastern had acquired the right to purchase the working interests of Continental et al. in the Rayne Field leases, under the terms and conditions of the Lease Sale Agreement dated December 4, 1958. By FPC order issued Febru-

* 31 FPC Ann. Rep. 145 (1951); 32 FPC Ann. Rep. 152 (1952); 33 FPC Ann. Rep. 125 (1953); 34 FPC Ann. Rep. 170 (1954); 35 FPC Ann. Rep. 182 (1955); 36 FPC Ann. Rep. 19 (1956); 37 FPC Ann. Rep. 25 (1957); 38 FPC Ann. Rep. 18 (1958); 39 FPC Ann. Rep. 21 (1959); 40 FPC Ann. Rep. 19 (1960); 41 FPC Ann. Rep. 3 (1961); 42 FPC Ann. Rep. 14 (1962).

ary 19, 1959, these proceedings were reopened for reception of evidence upon the Lease Sale Agreement of December 4, 1958, and the proposed Texas Eastern Rayne Field facilities. Hearings in the reopened proceedings were held in March 1959; and by FPC order issued April 6, 1959, intermediate decision procedure was dispensed with and the case was brought before the Commission itself for decision. At no time during any

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of these proceedings did the Commission so much as hint that it might possess or exercise jurisdiction over the Rayne Field leasehold conveyances.

In its comprehensive Opinion No. 322, issued herein on June 23, 1959, the Commission granted Texas Eastern's application for certification of the facilities—i.e., the 22-mile spur line and a compressor plant—required by Texas Eastern to take gas from the Rayne Field. In the course of that Opinion, the Commission was at pains to point out (mimeo. pp. 5-6; 21 FPC 860 at p. 864):

> "Texas Eastern has not filed an application for a certificate authorizing acquisition of the Rayne Field leases *and we have no authority to issue such a certificate.*" (Emphasis supplied.)

The New York Public Service Commission ("PSC"), an intervenor, took Opinion No. 322 up for review before the U.S. Court of Appeals for the District of Columbia Circuit. The Commission there adhered to its position that it lacked jurisdiction over the Rayne Field leasehold sale. Following are excerpts from the brief, dated July 11, 1960, filed by the Commission with the Court of Appeals:

> "The Commission's order does not authorize the purchase of the leases—*undisputably such authorization is outside its jurisdiction* (*infra*, p. 17). But petitioner complains that . . . the Commission has given a

'blessing' to the price Texas Eastern proposes to pay for the leaseholds *in that non-jurisdictional transaction.*" (p. 2; emphasis supplied.)

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"We discuss the want of Commission jurisdiction over the transfer of leases at p. 17, *infra.*" (p. 3, footnote 8.)

• • • • • • • • • • •

"... the Commission ... held in the opinion accompanying the order complained of ... :

> 'Texas Eastern has not filed an application for a certificate authorizing the acquisition of the Rayne Field leases and we have no authority to issue such a certificate.'

"... But the controversy here really stems from PSC's assumption that the Commission should treat *a nonjurisdictional sale of leases* as if it were a jurisdictional sale of gas." (p. 16; emphasis supplied.)

• • • • • • • • • • •

"A. The Act Does Not Require that Texas Eastern secure a Certificate Authorizing Acquisition of the Leases.

"Section 7(c) of the Act requires natural-gas companies to secure a certificate of public convenience and necessity before they 'acquire' any 'facilities' for jurisdictional transportation or sale of natural gas. The Supreme Court, in *FPC* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949), held that while even undeveloped leases might be 'facilities,' they are not 'facilities subject to the jurisdiction of the Commission' because Section 1(b) exempts 'production and gathering' from coverage of the Act.[31] ... PSC has not challenged *the Commission's position that Texas Eastern is free to acquire these developed (but hitherto unoperated) leases without certificate authority.* ...

"[31] 'Of course leases are an essential part of production.' 337 U.S. at 505. '[T]he transfer of undeveloped gas leases is an activity related to the

production and gathering of natural gas and beyond the coverage of the Act.' 337 U.S. at 515." (p. 17; emphasis supplied.)

• • • • • • • • • • •

"B. The Act Does Not Require the Assignors to Secure Either Abandonment Permission or Certificate Authority to Sell Their Leases.

"The abandonment provisions of the Act, Section 7(b), were construed in *Panhandle, supra.* Accepting that decision, no party has suggested that the Rayne Field leases could not be freely abandoned. *Panhandle similarly exempts the sale of leases from the certificate coverage of the Act.*" (p. 18; emphasis supplied.)

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"The Commission lacks the certificate power to regulate the transaction between Texas Eastern and its assignors." (p. 20.)

• • • • • • • • • • •

"The Commission realized that by the device of selling their leases the assignors escaped regulation of their revenue from the Rayne Field." (p. 26; emphasis supplied.)

The Court of Appeals disposed of PSC's appeal in an opinion rendered on December 8, 1960: *Public Service Commission of the State of New York* v. *Federal Power Commission,* 287 F. 2d 143. As to the Commission's lack of jurisdiction over Continental et al., as Assignors of the Rayne Field leases, the appellate court held as follows (287 F. 2d at pp. 145, 146):

"Instead of purchasing gas in the usual manner from the four producer-sellers, Texas Eastern proposed to acquire leasehold interests....

"The significance of this change in the form of the transaction, at least from the standpoint of the pro-

ducer-sellers, is manifest. Sales of natural gas by an independent producer are subject to Commission regulation under Sections 4 and 5 of the Natural Gas Act. *Phillips Petroleum Co.* v. *Wisconsin,* 347 U.S. 674 (1954). But the Commission has been held to lack jurisdiction over gas leases. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.,* 337 U.S. 498 (1949).

• • • • • • • • • • •

"It is of no importance here that the transactions by which Texas Eastern proposed to acquire gas will themselves be, by virtue of the change in form, beyond the regulatory control of the Commission."

That settled—or at least should have settled—the jurisdictional question, so far as Continental et al. were concerned. We shall have more to say on this subject later.

The Court of Appeals went on to remand the matter to the Commission "for further proceedings not inconsistent with the opinion of this Court" (287 F. 2d at p. 146). The fact that the Commission disobeyed this judicial mandate will also subsequently be discussed. The important point to be noted here is that the Court of Appeals ruled flatly and finally, on the authority of *Panhandle,* that the Commission lacked jurisdiction over the leasehold sale by Continental et al.

In seeming compliance with the Court of Appeals' mandate, the Commission on July 14, 1961, issued an "Order Reopening Proceedings, Prescribing Procedures and Fixing Date of Hearing." This, too, will shortly be considered at some length. The July 14, 1961, Order is noteworthy for purposes of the point now being discussed—namely, lack of FPC jurisdiction over Continental et al. as assignors of the Rayne Field leases—because that Order was completely silent concerning any such issue.

Pursuant to the Order of July 14, 1961, further hearings

were held before Presiding Examiner Frazee and were concluded on December 7, 1961. He handed down his Decision on June 29, 1962, in which he adhered to the established proposition that the Commission possesses no jurisdiction over the Assignors of the Rayne Field leases. (Decision pp. 7-11.)

Exceptions to Examiner Frazee's Decision were argued before the Commission on November 29, 1962, and on February 6, 1963, it issued its Opinion No. 378, to which this Application for Rehearing is addressed. Opinion No. 378 and the accompanying Further Findings and Order contain many grievous errors. For the present, we shall confine ourselves to the errors pertaining to the Commision's assertion of jurisdiction over the sale of leasehold rights and interests in the Rayne Field. Other errors will be specified under subsequent sections of this Application.

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E. Errors of the Commission in Connection With Its Assertion of Jurisdiction Over the Sale of Leasehold Rights and Interests.

1. *The Commision erred in confusing the parties' abandoned proposal to make conventional sales of gas with the lease sale transaction ultimately consummated.*

It is true that on February 1, 1957, Continental et al. proposed to sell gas from the Rayne Field to Texas Eastern under conventional gas sales contracts. Those tentative arrangements, however, were rescinded, cancelled and abandoned. Nothing came of them; they never materialized; they died before they were born.

The original proposals, therefore, no longer have any real bearing on this case. We concur wholeheartedly with the representation made by the Commission in its brief of July 11, 1960, to the Court of Appeals (p. 3; emphasis supplied):

"It is true that initially the four assignors [Continental et al.] planned to produce and operate the field themselves. They contracted to sell to Texas Eastern and applied for certificates of convenience and necessity. Prior to Commission action, however, they terminated the contracts and Texas Eastern negotiated a lease transfer arrangement instead. *So far as we can discern, the original program . . . has little bearing on the issues before this Court.*"

Now that the Commission has changed its mind, it has also changed its tune. At the outset, Opinion No. 378 states that these proceedings "arose from applications filed by Texas Eastern and Continental Oil Company for certificates

of public convenience and necessity under Section 7 of the Natural Gas Act." This refers, of course, to the abortive original gas sale proposal. The second paragraph in Opinion No. 378 is devoted largely to a description of the terms of the tentative conventional sale of gas that never took place. Having laid such a predicate, Opinion No. 378 later asserts:

"In considering the question of the Commission's jurisdiction over the in-place sale of the Rayne Field gas to Texas Eastern, it must be kept in mind that the original sales contract between the producers and Texas Eastern was clearly subject to FPC jurisdiction and not subject to state regulation." (p. 6.)

"As will be recalled, Texas Eastern shifted from a straight purchase of gas to the lease sale arrangement." (p. 10.)

In short, if the parties had sold gas, the Commission would have had jurisdiction; hence, the Commission must possess jurisdiction over this assignment of leases. The fallacy in such reasoning is apparent.

2. *The Commission repeatedly erred by misdescribing and misconstruing the lease sale transaction, the status of the parties to it, and its legal effect.*

In the course of Opinion No. 378, the transaction contemplated by the Lease Sale Agreement of December 4, 1958, and consummated by execution, delivery and recording of the Assignment and Conveyance of July 27, 1959, is misdescribed and misconstrued time and again, viz:

—As a transfer of a "supply of gas" or "gas supply" (pp. 1, 4);

—As a "sale" or "sales" of "gas," "natural gas" or "gas reserves" (pp. 4, 8, 11);

—As an "in-place sale" of "gas" or "gas reserves" (pp. 6, 9);

—As a means by which Continental et al. "transferred natural gas to Texas Eastern" (p. 6);

—As a means by which "gas . . . was sold in bulk (p. 6);

—As "in effect, a sale of a relatively well defined block of gas"; "a sale of a defined block of gas" (O'Connor, C., concurring).

By similar word-magic, Opinion No. 378 transforms Continental et al. from Assignors of leasehold rights and interests into "producers" and "independent producers of natural gas" (pp. 6, 9, 11).

When it engaged in this game of semantics, the Commission apparently forgot that it had previously told just the opposite story to the Court of Appeals. (FPC Brief of July 11, 1960, p. 3; emphasis supplied):

"PSC's complaint centers about *the sale of leases.* It does *not* concern a purchase of gas in place within the underground reservoir *(which Louisiana mineral law does not recognize). Nor does it involve a contract to sell gas as produced by the assignors.*"

Footnote 7 on the same page of the Commission's brief explained:

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"We use 'assignors' for the sake of clarity. PSC refers to the companies as 'producers' and it is true that they are elsewhere engaged in production. . . . As regards Rayne Field they might fairly be characterized the 'developers'; but they will not produce the gas whose cost is the bone of contention in this case."

In an attempt to justify calling white black, and *vice versâ,* Opinion No. 378 pretends that the Lease Sale Agreement and the Assignment and Conveyance did not have the legal effect with which they are endowed by the law of Louisiana. Although Continental et al. thereby irrevocably divested themselves of "real rights and incorporeal immovable property," and not one whiff of "natural gas" (see *ante,* pp. 14-16), the Opinion characterizes the lease sale transaction as follows:

—"technically in the form of leasehold transaction" (p. 4);

—"in form a lease transfer," but that was only the "label of the transaction"; not its "essence" (p. 6);

—having an "effect" that "resembles the ordinary sale of gas" (p. 6);

—a "form" that may not be exalted over "substance"; a mere exercise in "the technicalities of contract draftsmanship" (p. 9);

—an "attempt to disguise a transaction which in effect is a sale of gas by casting it in the form of a sale of leases" (p. 10).

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These are brave words, but, in the light of Louisiana property and mineral law, they are clearly nothing more.

None of the five features of the lease sale transaction listed on page 7 of Opinion No. 378 could convert that transfer of "real rights and incorporeal immovable property" into a sale of "natural gas":

(1) Reservation of rights in deep, untested strata and in oil and other minerals did not and could not transmute the remaining leasehold rights and interests into gas. How many additional millions of dollars would the Commission like Texas Eastern to pay for leasehold interests in unproved rock formations some two and a half miles below the surface? Or for oil and other minerals over which FPC has no jurisdiction?

(2) The reserved production payment, payable out of recovered hydrocarbon liquids, relieved Texas Eastern of all operating costs (except for drilling additional wells), and provided Texas Eastern with the prospect of substantial future income after the production payment is satisfied. Again, how many more millions does the Commission wish Texas Eastern to pay for non-jurisdiction condensate production?

(3) The fact that the promissory notes Texas Eastern delivered to Continental et al. provided that they must be paid off more rapidly if gas should be produced from the Rayne Field at an accelerated rate was necessary to

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protect the Assignors' security. If Texas Eastern were, by stepped-up production, to deplete the field in less than

sixteen years, the late maturing promissory notes would be unsecured. Default in payment of such notes would leave Continental et al. with no remedy; they could not recover the amounts due them by foreclosing their mortgages on depleted gas properties. This provision was not inserted in the notes "so that Texas Eastern's payments would be geared to production," as the Commission erroneously asserts; it was designed simply to assure adequate collateral security backing up Texas Eastern's note obligations. Moreover, there is no way by which Texas Eastern's down payment of the not inconsiderable sum of $12.4 million can be "geared to production."

(4) The reasons for the Management Agreement are recited in the preambles to that document (see *ante*, p. 13). It has no bearing whatever on the question of whether or not the lease sale was a lease sale.

(5) The interposition of Louisiana Gas Corporation as obligor shielded Texas Eastern from having "any liability for the notes on its books" (FPC Opinion No. 322, issued June 23, 1959, mimeo. p. 10; 21 FPC at p. 867). "However, it is expressly provided that Texas Eastern does not assume any personal liability on the notes or agree to pay and deficiency in the event of foreclosure" (Id., mimeo. p. 7; 21 FPC at p. 865). As the Commission took pains to explain in

footnote 13 on page 5 of its Brief of July 11, 1960, to the Court of Appeals:

> "Louisiana Gas was created to serve as an intermediary . . . There was evidence that the device of transferring oil and gas leases through an intermediary corporation is not peculiar to the instant acquisition (R. 1636-1638)."

What significance, then, can employment of this non-peculiar corporate device have upon the legal validity of the Rayne Field lease transfer?

After the Rayne Field had been discovered and developed, Continental et al. could profit from their successful venture in a number of different and distinct lawful ways. They could sell the gas, as produced, to an interstate transmission company such as Texas Eastern. They contemplated taking that course at one time, but later decided against it. A second alternative was to sell Rayne Field gas production for consumption wholly within the State of Louisiana. That would have eliminated any possibility of FPC price controls—and would also have meant a shortage of gas for Texas Eastern and those whom it served. A third alternative was to sell the Rayne Field leases to Texas Eastern. That is the approach ultimately adopted, because, among other things, it afforded Continental et al. more favorable tax treatment and it also lay beyond FPC's jurisdictional reach.

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The fact that the Commission wishes the parties had chose alternative No. 1 instead of No. 3 is immaterial. Such wishful thinking can neither invalidate the lawful and binding lease conveyance nor make it something else.

3. *The Commission erred in finding the Rayne Field lease sale transaction to have been a sale of natural gas for resale in interstate commerce.*

Specifically, the Commission erred when it opinioned and found as follows in Opinion No. 378:

> "We have jurisdiction over this transaction because by it the producers transferred natural gas to Texas Eastern for resale by Texas Eastern in the interstate market" (p. 6).

"Likewise, the sale of gas (or reserves) made under the circumstances here involved by the producers to Texas Eastern for transportation in its pipeline is a sale of gas for resale in interstate commerce and is subject to our jurisdiction" (pp. 8-9).

"Second, I conclude this transaction is 'in interstate commerce' because, and solely because, the necessary effect of this sale to an interstate pipeline is to place this gas into the stream or pattern of interstate commerce" (O'Connor, C., concurring).

"*The Commission further finds:*

* * * * * * * * * *

"(2) The Lease Sale Agreement referred to above represents sales of natural gas for resale in interstate commerce, which are subject to our jurisdiction under the Natural Gas Act . . .

"(3) Continental, Sun, Marr and General Crude have not obtained certificates or filed rate schedules in connection with their sales of natural gas subject to the jurisdiction of the Commission . . ." (p. 11).

These erroneous pronouncements are based, it would seem, on the circumstances that: (1) Continental et al. presumably knew what would become of the gas Texas Eastern would withdraw from its leases in the Rayne Field after Texas Eastern acquired such leases, and (2) after its leasehold acquisition, Texas Eastern actually did transport and sell for resale in interstate commerce the gas Texas Eastern produced from its leases in the Rayne Field.

The trouble with these pronouncements is that neither the Assignors' presumptions (or even their knowledge) before the lease sale transaction took place on July 27, 1959, nor the acts of Texas Eastern thereafter, could in any way affect the nature or legal effect of the leasehold conveyances.

Under Louisiana law, Continental et al. did not own any

gas in the Rayne Field (see authorities cited *ante*, p. 15). Prior to the time when Assignors assigned and conveyed their Rayne Field leasehold rights and interests to Texas Eastern, Continental et al. had not dedicated or committed any Rayne Field gas to interstate commerce, nor had any of that gas been transported or sold in such commerce. All that Continental et al. did was to assign and convey "real rights and incorporeal immovable property." Such conveyances likewise failed to vest Texas Eastern with title to any gas, but merely gave Texas Eastern the exclusive right to explore for and produce gas on the properties,

reduce such gas to possession, and then—and only then—to own such gas and dispose of it *as Texas Eastern might see fit*. The leasehold sale was not, and by its very nature could not be, a sale in interstate commerce; it affected only rights and interests in real property located wholly within the State of Louisiana.

In August 1959, some weeks after Texas Eastern acquired the Rayne Field, *it* began to transport gas from that field in interstate commerce, and *it* began to sell such gas for resale in such commerce. These acts on the part of Texas Eastern did not, and could not, retroactively transform the Assignors of the leases into producers or interstate sellers of gas. They didn't own the gas when it was produced; they didn't produce it; they didn't transport it; and they didn't sell it.

4. *The Commission erred in misstating the scope of its own prior Opinion.*

In Opinion No. 378, issued on February 6, 1963, the Commission had the following to say about its earlier Opinion No. 322, issued on June 23, 1959:

> "In our previous opinion the Commission merely noted without discussion that we had no authority to

issue a certificate for the acquisition of the leases (21 FPC at p. 864) . . . It is apparent the issue was hardly considered in the earlier phase of this proceeding; in our opinion, it may be considered at this stage if for no other reason than that the issue was given but passing mention by the Commission . . ." (p. 5).

"In our prior decision we did not hold that we had jurisdiction over this transaction but, in

effect, accepting it as labeled by the parties in granting a certificate to Texas Eastern" (p. 10).

These statements are belied by the Commission's own Brief of July 11, 1960, to the Court of Appeals. (See quoted excerpts, *ante*, pp. 23-25.) After there declaring that the lease sale transaction was "undisputedly outside its [FPC's] jurisdiction"; that it was a "non-jurisdictional transaction"; that there was a "want of Commission jurisdiction over the transfer of leases"; that it was "the Commission's position that Texas Eastern is free to acquire these developed (but hitherto unoperated) leases without certificate authority"; that "*Panhandle* similarly exempts the sale of leases from the certificate coverage of the Act," and that "The Commission lacks certificate power to regulate the transaction between Texas Eastern and its assignors"— after all that, the Commission's Brief added this clincher (p. 26):

"The Commission realized that by the device of selling their leases the assignors escaped regulation of their revenue from the Rayne field."

In the fact of these numerous, solemn declarations before the reviewing Court, it is difficult to find any justification for the Commission's now saying that the jurisdiction issue "was hardly considered in the earlier phase of this proceeding."

Examination of Opinion No. 322 itself reveals that it dwelt at length and in detail on every aspect—including

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the jurisdictional aspect—of the lease sale transaction. (See mimeo. pp. 2-3, 5-10; 21 FPC at pp. 861-862, 864-867). Said the Commission in that opinion, just before embarking on a comprehensive review of the lease sale terms:

> "Texas Eastern has not filed an application for a certificate authorizing the acquisition of the Rayne Field leases *and we have no authority to issue such a certificate.* However, *we have considered all the circumstances* pertaining to the company's acquisition of the Rayne Field leases and the effects of this transaction on the need and convenience of the public proposed to be served . . . and we conclude that the company's modified project, as it would include and rely on the acquisition of the Rayne Field leases, is required by the public convenience and necessity and otherwise meets the requirements of Section 7(e) of the Act" (mimeo. pp. 5-6; 21 FPC at p. 864; emphasis supplied).

Opinion No. 322, therefore, reveals internally that the Commission delved deeply into the jurisdictional question at that time. The Commission considered this question good and hard; not "hardly."

5. *The Commission erred in attempting to disparage the Court of Appeals' adjudication.*

In Opinion No. 378, the Commission commented as follows concerning the opinion of the Court of Appeals in *PSC* v. *FPC*, 287 F. 2d 143, rendered on December 8, 1960:

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> "The Court, again without discussion, noted that the 'Commission has been held to lack jurisdiction over gas leases' citing *FPC* v. *Panhandle Eastern Pipe Line*

> *Co.*, 337 U.S. 498. It is apparent the issue was hardly considered in the earlier phase of this proceeding; in our opinion, it may be considered at this stage if for no other reason than that the issue was given but passing mention by the Commission and the Court" (p. 5). "The reviewing court, with discussion, agreed with the Commission on the question of jurisdiction . . ." (p. 10).

These dim views of the cerebral processes of Circuit Judges EDGERTON, WASHINGTON and BASTIAN are also belied by the Commission's Brief of July 11, 1960 (see *ante*, pp. 23-25). Quite obviously, the appellate Judges read that Brief, found it to state correctly the law on the subject of FPC jurisdiction over transfers of leases, and held accordingly. The Court included in its short opinion two statements about jurisdiction (287 F. 2d at pp. 145, 146):

> "But the Commission has been held to lack jurisdiction over gas leases. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1948).
>
> • • • • • • • • • •
>
> "It is of no importance here that the transactions by which Texas Eastern proposes to acquire the gas will themselves be, by virtue of a change in form, beyond the regulatory control of the Commission."

These judicial determinations cannot be accurately described as having been delivered "without discussion" or as indicating that the jurisdictional issue "was hardly considered" or "was giving but passing mention" by the Court of Appeals.

To make plausible its design to expand its powers, the Commission has here resorted to the astonishing expedient of belittling and attempting to disparage the Court of Appeals' considered adjudication—the very adjudication which the Commission itself beseeched the Court to render.

6. *The Commission erred in presuming to overrule the Supreme Court's decision in the Panhandle case.*

Opinion No. 378 endeavors, initially, to distinguish *Panhandle* on three grounds, each of which is futile.

The first alleged ground of distinction is stated to be that in *Panhandle* "the leases were undeveloped so that the transfer did not resemble a sale of gas as did the sale of developed leaseholds here" (Opinion No. 378, p. 7). This won't hold water. The leases involved in *Panhandle* may not have been "developed" in the sense that they were fully drilled up; but they had been sufficiently proven so that the gas reserves underlying them could be estimated at "approximately 700 billion cubic feet" (337 U.S. at p. 500) and the high court could find that such leases covered "an estimated twelve per cent of its [Panhandle's] total gas reserves" (Id., at p. 499). The number of wells drilled in a gas field cannot possibly change an assignment of

leases into a sale of natural gas or anything that "resembles" such a sale.

The second asserted ground of distinction is that "the reserves here are connected or are to be connected to an interstate pipeline and are to be sold in interstate commerce while those in *Panhandle* were transferred to a corporation which subsequently sold them in intrastate commerce" (Opinion No. 378, pp. 7-8). This won't do, either. In both the *Panhandle* case and in our case no gas from the transferred leases was going into interstate commerce at or before the time of the transaction. In neither case could the transferee's disposition of gas production after acquiring the leases possibly affect, retroactively, the character of the act of transfer.

The third and final alleged ground of distinction is worded this way: "Also, in the *Panhandle* case the gas

reserves passed entirely out of the control of the seller while here the seller retained rights to oil, gas if found other than in particular strata, production payments for liquids, and management of the field" (Opinion No. 378, p. 8). We have already exposed the fallacies underlying these same arguments (*ante*, pp. 32-33). The Commission's concern over Texas Eastern's failure to buy and pay for deep exploration rights and rights to non-jurisdictional oil production was patently devised to point up a difference. However, it turns out to be a difference without a distinction.

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The statement that "the seller retained . . . management of the field" just plain isn't so. The "seller" wasn't Continental alone; there were four "sellers"—Continental, Sun, Marr and General Crude, the latter three of whom (besides not being parties to this proceeding) "retained" no "management" of anything. Neither did Continental "retain . . . management of the field"; Continental was employed, as an independent contractor, to act as Texas Eastern's agent in managing the Rayne Field operations, because Continental was best qualified to do so.

Having thus failed to lay the ghost of *Panhandle*, Opinion No. 378 next tries to make the specter go away by denouncing it as bad law (p. 8). The espoused thesis is that *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), in effect overruled *Panhandle*. This cannot be so, because *Phillips* cited *Panhandle* with approval for the very proposition that FPC jurisdiction does not extend to producing "properties" (347 U.S. at p. 678):

> "In *Federal Power Com.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 505, we observed that 'the natural and clear meaning' of the phrase 'production or gathering of natural gas' is that it encompasses '*the*

producing properties and gathering facilities of a natural-gas company.' Similarly, in *Colorado Interstate Gas Co.* v. *Federal Power Com.*, 324 U.S. 581, 598 . . . we stated that '[t]ransportation and sale do not include production and gathering,' and indicated that the 'production or gathering' exemption applies to the physical facilities, *and properties* used in the production and gathering of natural gas. Id., 324 U.S. 602, 603." (Emphasis supplied.)

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Thus, instead of overruling *Panhandle*, as FPC Opinion No. 378 would make it appear, *Phillips* actually reaffirmed the *Panhandle* doctrine.

Opinion No. 378 goes on to argue that *Saturn Oil & Gas Co.* v. *FPC*, 250 F. 2d 61 (10th Cir. 1957) and *Continental Oil Co.*, v. *FPC*, 266 F. 2d 208 (5th Cir. 1959), cert. den. 361 U.S. 827, which followed *Phillips*, may be deemed to have dealt *Panhandle* further mortal blows. The *Saturn* and *Continental* cases, however, involved conventional sales of natural gas at the wellhead, and the intermediate appellate courts merely held that such sales fell within the ambit of FPC jurisdiction. Neither *Saturn* nor *Continental* had anything to do with transfers of leasehold rights in real property.

In any event, the *Saturn* and *Continental* cases were decided by tribunals inferior to the U.S. Supreme Court and therefore could not conceivably have overruled the highest court in the land. *A fortiori*, a mere administrative agency has no power to overrule a Supreme Court decision, as the Commission has presumed to do in this case.

II.

The Commission Was Precluded As a Matter of Law From Reconsidering and Redetermining the Question of Jurisdiction Over Continental et al.

A. Relevant Facts

In its Opinion No. 322, issued June 23, 1959, the Commission held that it had no jurisdiction over Assignors' conveyance of the Rayne Field leasehold rights and interests to Texas Eastern. The reasons for this holding and the Commission's position with respect thereto were explained and expounded at length in the Commission's Brief of July 11, 1960, to the District of Columbia Court of Appeals (see quotations *ante*, pp. 23-25).

The Court of Appeals confirmed that the Commission lacked jurisdiction over the Assignors of the Rayne Field leases (287 F. 2d at p. 145):

> "But the Commission has been held to lack jurisdiction over gas leases. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949)."

And later the Court held that, while such jurisdiction over the Assignors was wanting, this did not prevent FPC regulation of the Assignee, Texas Eastern (287 F. 2d at p. 146; emphasis supplied):

> "It is of no importance here that *the transactions by which Texas Eastern proposes to acquire the gas will themselves be . . . . beyond the regulatory control of the Commission* . . . . the Commission's warrant to inquire arises by virtue of its *responsibility to regulate the purchaser, regardless of the status of the seller.*"

The Court further held that the Commission had failed to take appropriate action in Texas Eastern's (*not* the Assignors') certificate proceeding, wherein Texas Eastern was seeking authorization to construct and operate its new Rayne Field facilities—the 22-mile pipeline spur and compressor plant. In this regard, the Court said (287 F. 2d at pp. 145, 146; emphasis supplied):

> "It was entirely within the Commission's power to certify the pipeline construction program without passing upon the financial merits of the gas acquisition arrangement. But the language and tenor of the Commission's Opinion and Order appear to confer general approval upon the terms of the acquisition arrangement. Insofar as the Order purports to pass favorably upon the pricing aspects of the gas lease acquisitions, it is unsupported by substantial evidence in the record, and cannot stand."
>
> . . . . . .
>
> "The pipeline construction project and the transactions by which Texas Eastern will dispose of the gas thus acquired are clearly within the Commission's jurisdiction. . . .
>
> "*Two courses are open to the Commission.* It may, by clarification of the order presently under review, expressly disclaim any approval of the price to be paid for natural gas by the applicant [Texas Eastern]. . . . Or it may reopen the record in the certificate proceeding to permit *Texas Eastern* to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity.
>
> "The Commission's Order of June 23, 1959, is reversed, and the matter remanded to the Commission *for further proceedings not inconsistent with the opinion of this court.*"

Another fuling by a coordinate arm of the United States Government—the Internal Revenue Service—was

completely overlooked in Opinion No. 378. As observed, however, in footnote 5 to the Commission's prior Opinion No. 322 (mimeo. p. 6; 21 FPC at p. 864), one of the conditions precedent specified in the Lease Sale Agreement of December 4, 1958, was:

> "receipt by Continental *et al.* from the Internal Revenue Service of a ruling in writing that the gain from the sale of the leasehold interests will be considered a gain from the sale of a capital asset held more than six months under Section 1231 of the Internal Revenue Code of 1954."*

The IRS ruling of January 13, 1959, was written by Assistant Commissioner Harold T. Swartz. It reviewed in detail the provisions of the various documents involved in the lease sale transaction, including the Lease Sale Agreement, the Assignment and Conveyance, the Promissory Notes, the Acts of Mortgage and Pledge, and the Management Agreement. The ruling then concludes, in relevant part, as follows:

> "The leasehold rights to be sold to Grantee [Texas Eastern] were acquired by the respective Grantors [Continental et al.] in the usual course of business and with the expectation that the oil, gas and mineral deposits discovered thereon would be exploited and sold as produced. All of such rights owned by the respective Grantors have been held for more than six months.
>
> "You have asked that a ruling be issued holding that the gain from the proposed sale shall be recognized under the provisions of section 1231 of the Internal Revenue Code of 1954.

* Sec. 1231 of the IRC applies to depreciable personal property and real property used in trade or business.

"Based on the foregoing, it is held that the gain on the sale of the properties being disposed of will be subject to tax treatment provided by section 1231. . . ."

This Commission knew that Continental et al, had conditioned their lease sale transaction upon the issuance of such an IRS ruling, and after it was issued, the Commission was advised of that fact.

B. That The Commission Lacks Jurisdiction Over Continental et al. Has Been Judicially Settled and Is The Law of This Case.

The Court of Appeals' adjudication, confirming the Commission's holding that it has no jurisdiction over the sale by Continental et al, of their leasehold rights and interests, settled that question finally, and such adjudication thereupon became the law of this case.

Morand Bros. Beverage Co. v. *National Labor Rel. Bd.*, 204 F. 2d 529 (7th Cir. 1953), cert. den. 346 U.S. 909, rehearing den. 346 U.S. 940;

International Union v. *Eagle-Picher M. & S. Co.*, 325 U.S. 335 (1945);

City of Tacoma v. *Taxpayers of Tacoma*, 357 U.S. 320 (1958).

The *Moran* case, *supra*, is on all fours with ours. There, the Court of Appeals for the 7th Circuit had reviewed a National Labor Relations Board decision; had expressed its (the Court's) views on a controlling question of law; and had remanded the cause of the NLRB "for further proceedings in conformity with the decision of this court" (190 F. 2d

576, 584). Thereafter, the Board conducted further proceedings, but found itself in disagreement with the Court of Appeals' view of the law. The Board characterized the Court of Appeals' legal concept as having "a kind of superficial appeal, an aura of fairness," which on "more careful examination of the implications of this argument discloses its inherent defects."* When the cause came back for review the second time, the Court of Appeals made the following apt statements which bear directly on our situation (204 F. 2d at p. 532; emphasis added):

> "The position of any administrative tribunal whose hearings, findings, conclusions and orders are subject to direct judicial review, is much akin to that of a United States District Court. *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 140, 60 S. Ct. 437, 84 L. Ed. 656. That is to say, it is the 'inferior' tribunal, whose descisions, both substantive and, in some instances, adjective, are subject to review and consequent approval or disapproval by the reviewing body. The full implication of this relationship is realized when, as here, the occasion arises for the reviewing court to state what it believes to be the substantive law applicable to a particular controversy but finds that the lower tribunal has not conclusively found the facts to which this law should be applied. The result then, in view of the rule that a reviewing court shall not enter initial findings of fact, is an order remanding the cause 'for further proceedings in conformity

*In our case, the Commission has been somewhat more respectful, but just as disobedient. It has tried to get around the Court of Appeals' holding on the jurisdictional question by characterizing such holding as having been made "without discussion," and by surmising that the jurisdictional issue "was hardly considered" and "was given but passing mention" by the Court.

with the decision of this court.' *The pronouncements of the reviewing court are then known in the vernacular as 'the law of the case,' i.e., they are the rules to govern the particular dispute at hand,* unless, of course, the decision of the reviewing court is declared erroneous by a tribunal of competent jurisdiction holding a still more superior position in the judicial pyramid. *In such a situation it behooves the inferior arbiter to exercise great care that 'the law of the case' is applied to the facts of the case when they have been precisely determined by it. This is so even when it finds itself in well founded disagreement with its reviewer.*

"There is a most salutary reason for our adherence to this doctrine. While we must take care that improper or ill-conceived decisions be held to a minimum, and, when they appear, be quick to supplant them with sound decisions, we must remember that the particular lawsuit must, at sometimes, come to an end. It is conceivable, though admittedly highly improbable, that an individual piece of litigation could be bounced up and down endlessly, from trial to appellate court, merely because of the refusal of the lower body to apply the law as announced by the reviewing one. In short, experience has taught that causes are disposed of most expeditiously when the correction of errors is left to the superior tribunals and those enjoying judicial or administrative inferiority studiously endeavor to comply with the mandate issued to them."

In the *International Union* case, *supra,* the Labor Board found that companies had discriminated against their employees, who were accordingly ordered reinstated with back pay based on a formula specified by the Board. On review, the Court of Appeals, 8th Circuit, decreed that the Board's order, with minor modifications, should be enforced (119 F. 2d 903). Thereafter, the Labor Board changed its mind and decided that a different back-pay formula should be used. The Board thereupon petitioned the Court of Appeals to vacate that part of its former decree dealing with back

pay and to remand the cause to the Board so that a different method of compensation might be ordered. The Court of Appeals rendered judgment dismissing such petition (141 F. 2d 843). On certiorari, the U.S. Supreme Court affirmed the Court of Appeals' judgment, saying (325 U.S. at pp. 340, 341):

> "Finality to litigation is an end to be desired as well in proceedings to which an administrative body is a party as in exclusively private litigation. The party adverse to the administrative body is entitled to rely on the conclusiveness of a decree entered by a court to the same extent that other litigants may rely on judgments for or against them."
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> "The Board had exercised its discretion and devised a remedy. It gave long consideration to the problem of adequate relief for the employees discriminated against, and now asserts that it made a mistake . . . What the Board complains of is that it is not permittted to exercise its admittedly wide discretion a second time, or any number of times it may choose.
>
> "Administrative flexibility and judicial certainty are not contradictory; there must be an end to disputes which arise between litigants and those over whom they have jurisdiction."

In the *City of Tacoma* case, *supra*, the Supreme Court, among other things, passed upon the effect of a Court of Appeals' disposition of an FPC order pursuant to Section 313(b) of the Federal Power Act. That Section is substantially identical with Section 19(b) of the Natural Gas Act, pursuant to which the District of Columbia Court of Appeals disposed of the Commission's Opinion and Order No. 322 in

our case. Following are excerpts from the Supreme Court's opinion (357 U.S. at p. 336):

> "It can hardly be doubted that Congress, acting within its Constitutional powers, may prescribe the procedures and conditions under which, and the courts in which, judicial review of administrative orders may be had . . . So acting, Congress in § 313(b) prescribed the specific, complete and exclusive mode for judicial review of the Commission's orders . . . It there provided that any party aggrieved by the Commission's order may have judicial review . . . and that '[t]he judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission *shall be final*, subject to review by the Supreme Court of the United States . . . (empasis added). It thereby necessarily precluded de novo litigation between the parties of all issues inhering in the controversy . . . For Congress, acting within its powers, has declared that the Court of Appeals shall have 'exclusive jurisdiction' to review such order, and that its judgment 'shall be final' subject to review by this Court . . . Such statutory finality need not be labeled res judicata, estoppel, collateral estoppel, waiver or the like either by Congress or the courts."

See, also:

Safeway Stores v. *Porter*, 154 F. 2d 656, 657 (Emergency C. of A. 1946), cert. den. 328 U.S. 863;

Seatrain Lines v. *Pennsylvania R. Co.*, 207 F. 2d 255, 259 (3rd Cir. 1953);

Bower v. *Eastern Airlines*, 214 F. 2d 623, 626 (3rd Cir. 1954), cert. den. 348 U.S. 871;

Tomah-Mauston Broadcasting Co. v. *Federal Communications Com.*, 306 F. 2d 811, 913 (D. C. Cir. 1962);

Baltimore & Ohio R. Co. v. *New York, N.H. & H.R. Co.*, 196 F. Supp. 724, 745 (D. C. S.D. N.Y. 1961).

The Commission's reliance upon *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U.S. 134 (1940) is misplaced. The outcome in that case, coupled with Justice FRANKFURTER's ruminations on the differences

in origin and function of courts and of administrative agencies, creates the impression that agencies may not be bound by a reviewing court's directions. Nevertheless, a close reading of the opinion shows otherwise (309 U.S. at pp. 140, 145):

> "The Court of Appeals invoked against the Commission the familiar doctrine that a lower court is bound to respect the mandate of an appellate tribunal and cannot reconsider the questions which the mandate has laid at rest . . . That proposition is indisputable . . ."
>
> *"On review the court may thus correct errors of law and on remand the Commission is bound to act upon the correction."* (Emphasis added)

The Commission also mistakenly relies upon *National Labor Relations Board* v. *Baltimore Transit Co.*, 140 F. 2d 51 (4th Cir., 1944), cert. den. 321 U.S. 795. That case is cited, at page 5 of Opinion No. 378, for the proposition (at p. 55) that "An administrative agency, charged with the protection of the public interest, is certainly not precluded from taking appropriate action to that end because of mistaken action on its part in the past." In that case, however, the agency's "mistaken action" had been a failure to take any action whatever. As the Court of Appeals' opinion states (140 F. 2d at p. 54):

> "There was no adjudication by the Board of the question of jurisdiction or any other issue, but merely an administrative determination not to take action; and it is perfectly clear that the Board was not precluded thereby from taking

action at a later date, upon a new complaint and a different state of facts, when its jurisdiction had been made clear by intervening decisions of the Supreme Court and it appeared that the act was being violated by the company."

In our case, the situation is totally different. The Commission *did* take action and correctly (not mistakenly) held that it had no jurisdiction over the lease sale transaction. Moreover, the Commission stoutly maintained that same position before the Court of Appeals; and the Court concurred and upheld the Commission's position and affirmatively adjudged that jurisdiction was lacking. There was here no "new complaint," no "different set of facts," no "intervening decisions of the Supreme Court," and no evidence whatever that "the act was being violated," or ever had been violated, by Continental et al.

The authorities we have cited make it crystal clear that the Commission has been precluded, by its own prior determination and the confirmation thereof by the Court of Appeals, from changing its mind and asserting jurisdiction over Continental et al. at this late date. That the Commission lacks such jurisdiction has been finally settled by the Court of Appeals and has become the law of this case. The Commission has been commanded by higher authority to adhere to that adjudication. The Commission may not now elect to disobey the Court's explicit remand.

C. The Commission Is Foreclosed By the IRS Tax Ruling From Holding That Continental Et Al. Sold Gas Rather Than Leasehold Interests in Real Property

The IRS ruling of January 13, 1959, held that Continental et al. were selling "leasehold rights" to Texas Eastern. Only because that was so could the transaction be accorded

capital gains tax treatment. If Continental et al. were selling natural gas, they would be subject to taxation at the higher rates applicable to ordinary income.

Such ruling by a coordinate arm of the Federal Government is conclusive and binding upon this Commission.

Sunshine Anthracite Coal Co. v. *Adkins*, 310 U.S. 381 (1940);

Westgate-Sun Harbor Co. v. *Watkins*, 206 F. 2d 458 (D. C. Cir. 1953);

Eastern States Petroleum & Chemical Corp. v. *Walker*, 177 F. Supp. 328 (D. C., S.D. Texas 1959).

In the *Sunshine* case, *supra*, the Supreme Court held that a finding by the National Bituminous Coal Commission that the company's coal was bituminous constituted res judicata, so that the same question could not be redetermined by the Commissioner of Internal Revenue. Mr. Justice DOUGLAS, writing the Court's opinion, said (310 U.S. at pp. 402-403):

"'There is privity between officers of the same government so that a judgement in a suit between a party and a representative of the United States is res judicata in relitigation of the same issue between that party and another officer of the government . . . The crucial point is whether or not in the earlier litigation the representative of the United States (i.e. the Commission) had authority to represent its interests in a final adjudication of the issue in controversy . . . There can be

no question that it was authorized to make the determination of the status of appellant's coal under the Act. It represented the United States in that determination and the delegation of that power to the Commission was valid, as we have said. That suit therefore bound the United States, as well as the appellant.

Where a suit binds the United States, it binds its subordinate officials."

The *Westgate* case, *supra*, involved a trademark controversy. The Court said (206 F. 2d at p. 461):

"Also, the finality and binding character of the earlier decision is not impaired merely because the 1931 decision was made following an *interpartes* proceeding (interference action by Van Camp pursuant to Section 6 of the 1905 statute) whereas on the 1948 application the Patent Office denied registration by the *ex parte* method authorized by Section 12(b) of the Lanham Act. The issue in both cases was the same; all the parties required by the statute to be before the Patent Office or the particular court were, in fact, represented in each case, and the method or procedure prescribed for final determination of the right to registration was pursued. The difference in procedure was purely nominal and cannot therefore prevent res judicata from being a bar to the second proceeding."

The *Eastern States* case, *supra*, held that a determination of the Oil Import Appeals Board, which had been upheld by the District of Columbia Court of Appeals, was binding upon U.S. Customs officials. The District Judge held (177 F. Supp. at p. 334, footnote 6):

"The fact that the defendants in this suit are different from those in the District of Columbia suit is immaterial, since both sets of defendants are government officials and a judgment against the defendants in the District of Columbia suit would be res judicata as to the defendants in this suit. Sunshine Anthracite Coal Co. v. Adkins, 310 U.S. 381."

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D. Errors of the Commission

The Commission erred in its Opinion No. 378 and the accompanying Further Findings by holding and finding, in substance or effect, that the Commission has jurisdic-

tion over Continental et al. by virtue of their sale of Rayne Field leasehold rights and interests to Texas Eastern; that such lease sale transaction was not what it purported to be; that such lease sale transaction represented sales of natural gas; and that, by virtue of such lease sale transaction, Continental et al. are producers and sellers of gas from the Rayne Field. The reason why all such holdings and findings are erroneous is that they are contrary to fact, contrary to the Commission's own prior Opinion No. 322, contrary to the position taken by the Commission in its Brief filed with the District of Columbia Court of Appeals, contrary to that Court's opinion, adjudication and remand, and contrary to the IRS ruling of January 13, 1959. Such holdings and findings contravened the rule of res judicata and the law of the case, all as more fully shown hereinabove.

III.

The Commission's Opinion No. 378 Would Unlawfully and Unconstitutionally Deprive Continental et al. of Property Without Requisite Notice or Procedure and Without Due Process of Law.

A. Relevant Facts

Sun, Marr and General Crude were unconditionally permitted to withdraw from this proceeding in 1958—almost five years ago (Dockets Nos. G-12913, G-12885 and G-12931). They have since been completely out of this case and have had nothing whatever to do with it.

Shortly after July 27, 1959, when Texas Eastern acquired the Rayne Field leasehold rights from Continental et al., it also acquired, on substantially similar terms, additional leaseholdings from several other owners. None of such other former leaseholders was a party to any of the hear-

ings or proceedings herein leading up to the issuance of FPC Opinion No. 378.

Continental filed its Notice of Withdrawal of its abandoned certificate application (Docket No. G-12432) on January 27, 1959. Such withdrawal was unconditionally permitted by the Commission in its Opinion No. 322 of June 23, 1959, and the accompanying Order (mimeo., pp. 11, 12; 21 FPC 868, 869). By letter dated July 10, 1959, the Commission advised Continental as follows:

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"Paragraph (B) of the Commission's order of June 23, 1959, Opinion No. 322, *In the Matter of Texas Eastern Transmission Corporation, et al., Docket No. G-12446, et al.* is the formal granting by the Commission of Continental Oil Company's request to withdraw its application, Docket No. G-12432.

"Insofar as the Commission is concerned, the application is withdrawn and the docket closed. No further steps are necessary."

At that juncture, therefore, Continental was likewise completely out of this case.

The only parties to the review proceeding in the Court of Appeals (D.C. Circuit) were the New York PSC, as Petitioner; the FPC, as Respondent; and Texas Eastern, as Intervenor (287 F. 2d 143). The Court's opinion noted that three of the "producer-sellers" (Sun, Marr and General Crude) had "filed notice of the termination of their gas sales contracts and of withdrawal of their certificate applications"; and, in footnote No. 3 to the opinion: "The fourth producer-seller [Continental] did not file its notice of withdrawal until sometime later" (287 F. 2d 145).

The Court of Appeals reversed the Commission's Order of June 23, 1959 (i.e., the Order accompanying Opinion No. 322) and remanded the case to the Commission with directions that it follow one of two courses: (1) by clarification

of Order No. 322, expressly disclaim any approval of the price paid for natural gas by Texas Eastern, or (2) reopen the certification proceeding relating to Texas Eastern's Rayne Field facilities (the 22-mile spur line and

compressor plant) "to permit *Texas Eastern* to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity" (287 F. 2d at p. 146). The remand to the Commission was strictly limited to "further proceedings not inconsistent with the opinion of this court." (Id.)

On July 14, 1961—some seven months after the Court of Appeals rendered its opinion—the Commission issued an "Order Reopening Proceedings, Prescribing Procedures and Fixing Date of Hearing" (26 FPC 167). The members of the Commission who participated in the issuance of that Order were Chairman Kuykendall and Commissioners Stueck, Kline, Swidler and Morgan.*

The Order of July 14, 1961, read, in pertinent part, as follows (emphasis supplied):

> "By our Order of June 23, 1959, we issued a certificate . . . authorizing Texas Eastern . . . to construct and operate certain facilities including a compressor station at Rayne Field . . . and some 22 miles of pipeline connecting Rayne Field to Texas Eastern's Beaumont-Kosciusko line. The . . . Court of Appeals . . . in setting aside our aforesaid Order and remanding this matter to us for further proceedings not inconsistent with the opinion of the Court, has suggested the following *permissible* courses: [Then followed a verbatim quotation of the paragraph in the Court's opinion (287 F. 2d at p. 146) which stated that two courses open to the Commission were: (1) clarification of Opinion

* Commissioner Swidler later became Chairman. He is credited with authorship of Opinion No. 378. Mr. Morgan is another member of the Commission who had a hand both in the Order of July 14, 1961, and Opinion No. 378.

No. 322 by disclaiming approval of the price payable by Texas Eastern, or (2) reopening the record in the Texas Eastern certification proceedings to permit Texas Eastern to justify its acquisition costs.]

"In our judgment the first course enunciated by the Court would too long leave unsettled matters of public importance and would provide inadequate protection to the public. Accordingly, we shall reopen the record in this proceeding *to afford Texas Eastern an opportunity to make that showing contemplated by the Court's aforequoted latter course.*

"It is also necessary and reasonable that we define, but not necessarily limit, the issues and prescribe procedures, as hereinafter ordered, so as to guide the course of this reopened proceeding:

"*The Commission orders:*

"(A) The consolidated proceeding designated as Docket Nos. G-12446, G-12447 and G12432 is hereby reopened *for the purpose of determining:*

"(1) Whether the public convenience and necessity require that the certificate issued in these proceedings by our order of June 23, 1959, and set aside by the Court of Appeals, be reissued in whole or in part;

"(2) Whether *the cost of the Rayne Field gas to Texas Eastern and its customers over the productive life of the field* is out of line;

"(3) Whether *Texas Eastern's* proposal is in the public interest even if the cost of the gas to Texas Eastern and its customers proves to be out of line; and

"(4) If *Texas Eastern's lease acquisition* is not in the public interest by reason of the cost of the Rayne Field gas, whether *Texas Eastern* should be ordered to cease and desist from operating the 'Rayne Field facilities' or

as a possible alternative, *whether Texas Eastern will agree* that in future determinations of the justness and reasonableness of *its* rates under Sections 4 and 5 of the Natural Gas Act *it* will not claim actual costs associated with Rayne Field gas if the reasonable area price is lower than actual cost.

"(B) In order to better resolve *the aforesaid issues* and that the hearing as hereinafter ordered may proceed in an expeditious manner, it is further ordered that on or before August 30, 1961, *Texas Eastern* file with the Commission and serve on all the parties a supplement to *its* applications herein to contain at a minimum:

"(1) *An up-to-date reserve and deliverability study for the Rayne Field to include actual production to date;*

"(2) *Annual production plans for Rayne Field extending through to the estimated life of the field;*

"(3) An exhibit showing *the proposed method of accounting by Texas Eastern for the Rayne Field transaction* and all costs incident thereto; and

"(4) Study or studies showing the cost of making natural gas from Rayne Field available to the Texas Eastern system, including every cost associated, either incurred and/or anticipated, *in the acquisition, further development, production, operation and maintenance of Rayne Field which Texas Eastern claims should be considered* in future determinations of the justness and reasonableness of *Texas Eastern's rates.* Such studies should reflect the *anticipated annual changes in the cost of the Rayne Field gas through to the estimated year of abandonment.*

"(C) . . . a hearing will be held on October 23, 1961 . . . *respecting the matters stated in paragraph (A) above.*"

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On July 19, 1961, Mr. Burton, one of Continental's attorneys, wrote a letter to the Commission concerning its Order of July 14th. That letter read, in part, as follows:

> "... Continental Oil Company, Docket No. G-12432, was included in the order as a designated applicant.
>
> "Paragraph (B) of the Commission's Order of June 23, 1959, Opinion No. 322 ... granted Continental's request to withdraw its application for a certificate in Docket No. G-12432. Therefore, it would appear that Continental should not be included in the Commission's order of July 14, 1961....
>
> "I trust that appropriate erratum notice may be issued deleting Continental as a party to the reopened proceedings."

The Commission never replied to Mr. Burton's letter, and the erratum notice which he requested was never issued.

Hearings before Presiding Examiner Frazee were held during the fall of 1961 and were closed on December 7 of that year (Examiner Frazee's Decision, p. 7). Neither Continental nor any of the other assignors was represented at, or participated in, these hearings (Id., pp. 1-2, 7). During the hearings, only Texas Eastern offered evidence (Id., p. 7), and no new evidence was adduced which had any material bearing on the question of the Commission's jurisdiction over Continental et al.

After the hearings were closed, the only briefs filed with Examiner Frazee were those of Texas Eastern, the FPC Staff, and five Intervenors (Id. p. 7). The briefs of

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the Staff and one Intervenor then raised the jurisdictional issue *for the first time.*

In his Decision of June 29, 1962, Examiner Frazee rejected these belatedly concocted contentions that the Com-

mission should exercise jurisdiction over Texas Eastern's acquisition of Rayne Field leases (Id. pp. 7-9). In perfect consonance with the Court of Appeals' opinion and remand, Examiner Frazee said (Id. pp. 9, 10):

> "In applying the principles of the *Panhandle* and *Phillips* opinions, *supra*, to the evidence of record in this hearing, it is concluded that the Commission was without jurisdiction over the Rayne Field lease and leasehold acquisition . . . This is not to say, however, that the Commission is without jurisdiction to regulate the purchaser of the natural gas, in this case Texas Eastern . . ."
>
> . . . . . .
>
> "Because the Commission did not have jurisdiction over the acquisition of these Rayne Field leases and the natural gas thereunder presents no legal barrier to the Commission's jurisdiction over the purchaser of the gas. This jurisdiction attaches upon the acceptance by Texas Eastern of a certificate of public convenience and necessity issued by the Commission upon the application of Texas Eastern for authorization to connect, by construction and operation of the facilities herein proposed, the Rayne Field gas reserves to its interstate system . . ."

Examiner Frazee then proceeded to consider what price Texas Eastern should be permitted to charge for the gas it extracts from its Rayne Field leases, and concluded that such charge should initially be no more than 18.5¢ per Mcf, exclusive of taxes (Id., pp. 10-20).

Exceptions to Examiner Frazee's Decision were filed by Texas Eastern, the FPC Staff and certain Intervenors (FPC Opinion No. 378 of February 6, 1963, pp. 1, 4). Such exceptions were argued before the Commission on November 29, 1962 (Id., p. 1). Neither Continental nor any of the

other Assignors took any exceptions or participated in the argument before the Commission.

The Commission's Opinion No. 378 of February 6, 1963, to which this Application for Rehearing is addressed, held, as we have previously described, that FPC *did* have jurisdiction over the lease sale transaction and over the Assignors of the leases, as well as over the assignee, Texas Eastern; that such transaction had been effected by a transfer of leasehold rights and interests in form only; that it was actually a "disguised" sale of natural gas for resale in interstate commerce; and that accordingly the Assignors were producers and sellers of natural gas in interstate commerce, and, as such, were subject to FPC jurisdiction and were obligated, pursuant to the Act, to file "rate schedules" and apply to the Commission for certificates authorizing such sales of natural gas.

The Commission further held (Commissioner O'Connor in effect dissenting) that—difficulties have been encountered in determining the exact price at which Continental et al. had sold the Rayne Field gas and the exact cost of that gas to Texas Eastern—the whole lease sale transaction

would have to be rescinded. The Assignors and Texas Eastern were commanded to do so and to agree upon and to enter into new and entirely different contractual arrangements which the FPC can more readily regulate (Opinion No. 378, pp. 10-11).

B. How Continental Et Al. Were Denied Due Process

In the famous case of *Morgan* v. *United States*, 304 U.S. 1 (1938), Chief Justice HUGHES spelled out the basic legal and constitutional principles which every administrative agency must observe (304 U.S. at pp. 14-15, 18, 19):

> "The vast expansion of this field of administrative regulation in response to the pressure of social needs

is made possible under our system by adherence to the basic principles that the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. These demand a 'fair and open hearing'—essential alike to the legal validity of the administrative regulation and the maintenance of public confidence in the value and soundness of this important governmental process. Such a hearing has been described as an 'inexorable safeguard'."

• • • • • • • • • • •

"The right to a hearing embraces not only the right to present evidence, but also a reasonable opportunity to know the claims of the opposing party to meet them. The right to submit argument implies that opportunity: otherwise the right may be but a barren one. Those who are brought into contest with the government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the government proposes and to be heard upon its proposals before it issues its final command."

• • • • • • • • • •

"Congress, in requiring a 'full hearing,' had regard to judicial standards,—not in any technical sense but with respect to those fundamental requirements of fairness which are the essence of due process in a proceeding of a judicial nature."

In this case, Continental et al. were denied "a reasonable opportunity to know the claims of the opposing party and to meet them," "the right to present evidence," and a "fair and open hearing." Continental et al. were neither "fairly advised of what the government proposes," nor were they "heard upon its proposals before it issued its final command." In short, they were denied due process

of law, in flagrant violation of the Fifth Amendment to the Constitution of the United States.

We concede Continental was technically and nominally a party to the proceeding which was reopened following remand from the Court of Appeals.* Although

Continental was consistently treated as a party, it was not, and could not be, anything more than a party-in-limbo, so to speak, because it was seeking nothing from the Commission and the Commission was seeking nothing from it. Continental's 1957 certificate application in Docket No. G-12432 pertained exclusively to a tentative gas sale contract that had been cancelled and abandoned in 1958. That old application was, therefore, as dead as a Dodo in 1961, whether the Commission formally permitted its withdrawal or left the corpse to molder forever in its Docket-coffin.

The only live certificate application pending before the Commission was Texas Eastern's application for authority to operate its Rayne Field facilities—the 22-mile spur pipeline and compressor station. That was entirely Texas Eastern's affair; Continental neither had, nor could have had, any part to play in it.

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* Withdrawal of Continental's certificate application (relating to its proposed, but subsequently abandoned, conventional gas sale contract with Texas Eastern) had been officially permitted by the Commission's Order accompanying its Opinion No. 322 of June 23, 1959. That Order, however, was later reversed by the Court of Appeals. Such reversal conceivably restored the situation obtaining before Opinion No. 322 was issued; and theretofore, Continental's posture had been that of a party whose notice of withdrawal could not be effective without FPC permission. (FPC Rules of Practice and Procedure, § 1.11(d)(1).) Moreover, Continental was named as a party, and its Docket No. G-12432 was included, in the Commission's Order of July 14, 1961, reopening the proceeding. Mr. Burton's request of July 14, 1961, that such inclusion of Continental be rectified was ignored. Continental and its Docket No. G-12432 appeared in the caption of all subsequent documents filed in the reopened proceeding.

As for the other three Assignors—Sun, Marr and General Crude—they were lynched without any process of law whatever. No action was ever taken, nor was an attempt ever made, to bring them into the reopened proceeding. The Rayne Field lease conveyance had been a joint one, effected by a single instrument signed by four Assignors. While Continental's was the largest interest in the transaction—55.9%—the combined interest of the other three Assignors came to 44.1%, or, in money value, approximately $59.3 million. The most vivid illustration of the Commission's

utter disregard for "the rudimentary requirements of fair play" in this case, is displayed by the fact that the Commission blandly directed Sun, Marr and General Crude, *in absentia*, to surrender their contractual rights to receive so vast a sum of money. See: *Northern Natural Gas Co. v. State Corporation Commission*, — U.S. —, 31 Law Week 4200 at p. 4203 (Feb. 18, 1963).

The Commission's denial of due process to Continental was more subtly accomplished. To appreciate this accomplishment, the following facts must be recalled:

(1) Seven months prior to July 14, 1961, the jurisdictional question had been finally adjudicated by the Court of Appeals. That adjudication had become the law of this case and was conclusive and binding on all parties concerned, including the Commission. There was no possibility that the jurisdictional issue could be lawfully relitigated. This meant that the lease sale transaction was a *fait accompli;* that the Commission was precluded as a matter of law from tampering with the lease sale so far as Continental et al. were concerned.

(2) By its remand, the Court of Appeals had confined further FPC proceedings herein to questions affecting

Texas Eastern alone. The Court had directed the Commission to follow one of two courses: either disclaim approval of the price Texas Eastern had paid for the leases, or give Texas Eastern—and nobody else—an opportunity "to

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establish by adequate evidence that the acquisition costs which *it* proposes to incur will be consistent with the public necessity and convenience."*

(3) If the Commission elected to pursue the second alternative specified by the Court of Appeals—which the Commission did—the effect on Texas Eastern was plain to see. By purchasing the Rayne Field leases, Texas Eastern had assumed the risk of an ultimate, but highly improbable, determination that it had made an improvident investment. Based on the estimated huge Rayne Field gas reserves, Texas Eastern had clearly, through the lease-purchase transaction, obtained a golden opportunity to produce its own gas much more cheaply than if it paid others for an equivalent volume of gas at then prevailing South Louisiana prices. Nevertheless, it was Texas Eastern, and *not* the Assignors, who would be forced to shoulder a loss in the remote contingency that Texas Eastern's lease-acquisition costs should finally be held to have been unreasonably and improvidently excessive. Such loss could, moreover, be imposed only upon Texas Eastern, because it was the only one applying for a certificate, and the Commission was unquestionably empowered to impose conditions on the granting of such a certificate.

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(4) The Commission's Order of July 14, 1961, reopening the proceeding, complied meticulously with the opinion and

* The Commission later disobeyed the Court of Appeals by following neither of these prescribed courses; instead, the Commission adopted a completely different and forbidden course of action.

remand of the Court of Appeals. In that Order, the Commission elected to adopt the judicially-prescribed second course of action: "we shall reopen the record in this proceeding to afford *Texas Eastern* an opportunity to make that showing contemplated by the Court's aforequoted latter course." The Commission carefully framed the issues to be resolved; only issues bearing on Texas Eastern's application for a certificate covering the Rayne Field facilities were up for determination, to-wit: (1) whether such certificate should be "reissued in whole or in part"; (2) whether "the cost of the Rayne Field gas to *Texas Eastern* and its customers over the life of the field" would be "out of line"; (3) whether "*Texas Eastern's proposal*" would be "in the public interest" even if the cost should prove to be "out of line"; and (4) if "*Texas Eastern's lease acquisition*" should be found to have been unduly costly, "*whether Texas Eastern* should be ordered to cease and desist from operating the 'Rayne Field facilities' or as a possible alternative, *whether Texas Eastern will agree* that . . . . *it* will not claim actual costs associated with Rayne Field gas if the reasonable area price is lower than actual cost." A hearing was ordered "*respecting the matters stated in paragraph (A) above,*" viz: the four specified issues we have just summarized.

(5) To "*better resolve the aforesaid issues,*" the July 14th Order also directed that "*Texas Eastern* file . . . . a supplement to *its* applications herein." Such supplement was to contain "at a minimum" sundry data, all based on the fact that Texas Eastern had bought the Rayne Field leases and would hold them "through to the estimated year of abandonment."

(6) The Commission's Order of July 14, 1961, contained not a single mention, or even a hint, that the jurisdictional

issue, or any other issue in any wise involving or adversely affecting Continental et al. would be, or could be, raised or determined in the reopened proceeding.

Section 5(a) of the Administrative Procedure Act (5 U.S. Code § 1004(a)) provides that persons entitled to notice of an agency hearing shall be timely informed, among other things, of "the nature thereof" and "the matters of fact and law asserted." Similarly, § 1.20(m)(2) of the Commission's Rules of Practice and Procedure imposes this requirement: "The order or notice initiating a hearing . . . shall state the nature of the proceeding." The Commission's Order of July 14, 1961, represented about as explicit a statement of the "nature" of the hearing to be held and of "the matters of fact and law asserted" as any one could desire. According to that Order, only Texas Eastern could be affected by the outcome of the hearing; no issue would be considered or decided which would affect the rights of Continental et al.

Certainly, Continental (or any other Assignor, who, perchance, saw it) was entitled to rely on the Commission's Order of July 14th. With equal certitude, Continental et al. were fully justified in relying on the Commission to honor the judicially established law of the case and to obey faithfully the Court of Appeals' remand.

Based on such reliance, Continental took no part in the hearing before Examiner Frazee, the exceptions to his Decision, or the argument of those exceptions before the Commission. It was clear that if these proceedings were conducted in accordance with the provisions of the Order initiating them and in accordance with the controlling, adjudicated law, no issue was, or could be, raised, considered or determined which would adversely affect Continental or any of the other Assignors. Only Texas Eastern was

called upon to adduce any evidence; only Texas Eastern could, in the end, suffer any possible loss.

It was not until February 7, 1963, that Continental learned from the newspapers that it had been booby-trapped. The incredible morning's news was that in a proceeding wherein Continental was a party in name only, wherein it purportedly had nothing at stake, wherein it had not been represented, wherein it had not been entitled to introduce any evidence, and wherein it had not been heard or had any occasion to be heard, the Commission had ruled against Continental on a vital issue of which Continental had received no notice

and which two years earlier had been finally adjudicated the other way by the Court of Appeals. While Continental, Sun, Marr and General Crude weren't looking and had no reason to be wary, the Commission had contrived to relieve Texas Eastern of the regulatory risks it had assumed and to saddle a back-breaking burden on these unsuspecting absentees.

C. Errors of the Commission

The Commission erred in stating that the "issues which arise from the record in this proceeding" included the issue "whether we have jurisdiction over the lease sale arrangement" (Opinion No. 378, p. 4). So far as the jurisdictional question was concerned, the record before the Commission in 1962-1963 was to all intents and purposes identical with the record which was before the Commission when it wrote its Opinion No. 322 in 1959. On that earlier occasion, the same record made it clear to the Commission that it had no jurisdiction. In the interim, moreover, such want of jurisdiction had been judicially confirmed and settled. Thus, the jurisdictional issue did not really "emerge from the

record in this proceeding"; it emerged from a change of heart and a change in FPC membership.

The Commission erred in disagreeing with Texas Eastern and Examiner Frazee on the jurisdictional issue (Opinion No. 378, p. 4). As we have shown above, Texas Eastern and the Examiner were 100% right in contending that the Commission lacked jurisdiction over the transaction

between Continental et al. and Texas Eastern "because what was to have been a sale of gas has been converted into a sale of leases," and that the Commission was "left . . . . only with the jurisdiction to disallow a portion of Texas Eastern's cost of its gas supply."

The Commission erred in misconstruing and repudiating its Order of July 14, 1961, which reopened the proceeding following remand from the Court of Appeals (Opinion No. 378, pp. 5-6). Opinion No. 378 first picks out the four words "but not necessarily limit" from one of the Order's preambles, and declares, in effect, that those four words nullified the hundreds of other words covering most of two pages of fine type in the official print (26 FPC 167-168). We have already quoted (*ante*, pp. 60-62) the relevant parts of the July 14, 1961, Order so that its full flavor can be tasted. The preamble in question recited:

> "It is also necessary and reasonable that we define, *but not necessarily limit*, the issues . . . . so as to guide the course of this reopened proceeding."

Then followed paragraph (A) of the Order itself, which directed that: "The consolidated proceeding . . . . is hereby reopened for the purpose of determining" the four specific issues we have previously discussed (*ante*, p. 71). If those were not the issues to be determined in the reopened proceeding, then the Order of July 14, 1961, was a sham, a

delusion, and a snare in direct violation of the controlling procedural statute (5 U.S. Code, § 1004(a)). It might as

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well be said that the four words "but not necessarily limit," gave notice that Continental et al. were to be tried for arson, rape, murder or treason, as to say the Order of July 14th constituted notice that the judicially settled jurisdictional question was to be relitigated.

Indeed, the jurisdictional issue was not tried anew in the record of the reopened proceeding. That issue was raised initially—and then only in briefs—after the record pertaining exclusively to other matters had been concluded and closed.

Near the top of page 6 of Opinion No. 378, it is stated that "in any event the jurisdictional issue is comprehended in the issue whether the public convenience and necessity require that the certificate [to Texas Eastern] be reissued." That just isn't so. Notice of intention to inquire into the public convenience and necessity regarding Texas Eastern's facility certificate could not possibly "comprehend" the totally different and distinct question of whether the Commission possessed jurisdiction over the transfer of leases and over the Assignors who made the transfer. The error here was not so common as confusing oranges and apples; it was more in the order of confusing a peanut with an elephant.

Also near the top of page 6, Opinion No. 378 says: "The issue of jurisdiction is fundamental and could not be waived" (footnoted to "compare" *United States* v. *Corrick*, 298 U.S. 435, 440, and *Mitchell* v. *Maurer*, 293 U.S. 237,

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244). Those cases are way off the point; they merely repeat the familiar doctrine that if a lower court *exercises jurisdiction which it lacks*, such basic error may later be corrected

at any time on appeal, even though no objection was voiced in the court below. Here, we have the opposite situation. The fact that the Commission lacked jurisdiction over the lease sale transaction had been finally adjudicated by the Court of Appeals on the authority of the Supreme Court's decision in the *Panhandle* case; yet the Commission sought, nevertheless, to assert jurisdiction in contravention of the appellate court's pronouncement of the law of this case. The Commission is powerless to "waive" either the Court of Appeals' adjudication or the *Panhandle* decision of the Supreme Court.

Opinion No. 378 errs again in the first paragraph on page 6 by taking comfort from the fact that: "The jurisdiction issue was raised and briefed before the examiner, and was briefed and argued before the Commission." No such issue was raised, briefed or argued, either by or against Continental et al. They were not there, and they had no standing to participate in those wrangles. Continental et al, were, as we have previously pointed out, fully warranted in relying on (1) the Commission's own enumeration, in its Order of July 14, 1961, of the only issues which could properly be considered and decided; and (2) the final adjudication by the Court of Appeals, which had been sought by the Commission itself.

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We understand that in the reopened proceeding the person who advocated most vociferously that the Commission should assert jurisdiction over the lease sale transaction was an FPC Staff Counsel who was a newcomer to this long-drawn-out proceeding. He it was, in his capacity as the Commission's own lawyer, who succeeded in convincing his bosses that they might properly reverse their Examiner, themselves, the Court of Appeals and the U. S. Supreme Court, and that they might also safely ignore the laws of Louisiana, the prior ruling of the IRS, and the

Constitutional safeguards found in the Fifth Amendment. In short, the Commission argued with itself and decided to change its mind, do an abrupt about face, and declare everybody else out of step. Continental had no reason to anticipate any such sudden and drastic contradiction of everything that had happened before.

IV.

The Commission's Disposition of These Proceedings Is Unauthorized by Law, Impossible to Comply With, and a Legal Nullity

A. Relevant Facts

The lease sale transaction between Continental et al. and Texas Eastern was consummated on July 27, 1959. Total payments made to date by Texas Eastern on account of the purchase price come to approximately $37 million. The remaining $97.4 million owed by Texas Eastern is evidenced by its outstanding promissory notes, which continue to be liquidated by monthly installments. If Texas Eastern should default in payments on the notes, Continental et al. may foreclose their mortgages and recover the Rayne Field leases.

Included with the sale of leasehold interests was a sale of many hundreds of thousands of dollars worth of equipment and facilities used or useful in connection with the Rayne Field producing operations. Since July 1959 this personal property has been subject to wear and tear, and has depreciated in value. Some of it has worn out.

Reference is made to the IRS ruling of January 13, 1959, more fully described and quoted from *ante*, pp. 47-48.

Texas Eastern started pulling gas out of the Rayne Field in August 1959, and in the intervening three and a half years has extracted something over 165 billion cubic

feet of gas. Deliveries of gas from the field are continuing at a rate of around 140 million cubic feet per day.

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Set forth below are pertinent excerpts from the Commission's Opinion No. 378 and the accompanying Further Findings and Order, issued February 6, 1963:

(1) *The Commission considered the lease sale arrangement objectionable because it would be difficult to regulate:*

"Control limited to approving the costs of the gas to the purchasing pipeline is, of course, not an effective way to regulate producer prices because in the large a pipeline must be allowed to pass on its purchased gas costs to the ultimate consumer or it cannot continue to discharge its public service responsibilities" (p. 9).

". . . the terms of the instant arrangements . . . certainly did not envision adjustments from time to time to comply with FPC rate regulation. . . ." (Id.)

"Another consideration . . . is the fact that the Commission is now implementing the area approach to producer regulation. Sales under the arrangements herein contemplated could not be readily adjusted. . . ." (Id.)

"The record in this proceeding clearly demonstrates the difficulty of attempting to determine a proper price for this gas under the present arrangement. . . . Thus, in order to determine the cost, lengthy hearings would be required and careful consideration would have to be given to factors that should not be involved in a certificate proceeding. Even then the per Mcf price of the gas could not be determined with any reasonable degree of accuracy at this time because many of these

factors are based on estimates and forecasts of varying degrees of reliability" (pp. 9-10).

"What is objectionable here is the attempt to disguise a transaction . . . with provisions that would make it difficult if not impossible to subject to regulatory control the price for the sale to an interstate pipeline of this large body of gas" (p. 10).

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(2) *Because of such regulatory difficulties, the Commission found the lease sale transaction to be not in the public interest:*

". . . it is not in the public interest for this Commission to certificate a transaction such as the one presented to us on this record" (p. 9).

"We now find . . . that the transaction is not in the public interest as a way to acquire gas supplies" (p. 10).

(3) *The Commission therefore commanded the parties to rescind the lease sale transaction and to agree upon and enter into new and different contractual arrangements:*

"In view of the deficiencies of the lease sale arrangement we are of the opinion that . . . we should require the formulation of a different means for Texas Eastern's acquiring gas supplies" (p. 10).

"In these circumstances the parties should be given ample opportunity to work out new arrangements. . . . We shall therefore afford Texas Eastern and its suppliers a period of 6 months to complete such arrangements. . . ." (Id.)

"In making the requirement for filing a new arrangement we are not defining our requirements with precision, for we think that in view of the procedural delays

and the contractual arrangements that have been made the parties should have considerable freedom to extricate themselves from this complicated situation. However, consistent with our discussion above the lease sale arrangement should be rescinded. . . . The new contract, of course, would be effective from the delivery of the first gas from the Rayne Field and would be a substitute for the lease sale arrangement now proposed. We do not think it would be inequitable to require this revision. . . ." (p. 11).

"*The Commission orders:*

* * * * *

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"(B) . . . Texas Eastern shall file a revised application for a certificate to put into effect a new arrangement for the supply of gas to Texas Eastern from the Rayne Field. . . ." (p. 12).

(4) *Continental et al were directed to file rate schedules and applications for certificates authorizing their sales of gas to Texas Eastern under the "new arrangements":*

"It will now be necessary for the producers to file an application for a certificate . . . to obtain Commission approval of the sale of this gas" (p. 9).

"We shall therefore afford Texas Eastern and its suppliers a period of 6 months to . . . make the necessary filings with this Commission" (p. 10).

". . . the producers, or one producer acting for all, should file rate schedules for the sale of gas to Texas Eastern and corresponding applications for certificates. . . ." (p. 11).

"*The Commission further finds:*

"(1) Continental, Sun, Marr and General Crude are independent producers of natural gas and natural gas companies . . . by participation in the Lease Sale Agreement discussed herein.

• • • •

"(3) Continental, Sun, Marr and General Crude have not obtained certificates or filed rate schedules in connection with their sales of natural gas. . . ." (Id.)

"*The Commission orders:*

• • • •

"(B) Continental, Sun, Marr and General Crude within six months of the issuance of this order shall make filings of appropriate rate schedules and applications for certificates . . ." (p. 12).

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B. ARGUMENT

Opinion No. 378 commands the parties to do two things that can't be done: rescind the 1959 lease sale transaction and make some sort of "new arrangements" which the Commission will be able to regulate more easily. Each of these steps requires that Continental et al. on the one hand and Texas Eastern on the other arrive at an agreement: first, on the terms of the rescission, and secondly on the terms of the "new arrangements." The Commission possesses no authority whatever to force any person against his will to make an agreement. The Natural Gas Act is the only source of the Commission's authority, and we have been unable to find anything in the Act which endows the Commission with any such imperial powers.

Neither have we been able, through diligent search, to find any case directly in point. The apparent absence of

any such precedent suggests that this is the first time any agency or court has felt it could, by decree, force a meeting of the minds. The meager fruit of our research effort consists of passages from two District Court decisions:

In *Shipley* v. *Pittsburgh & L.E.R. Co.*, 83 F. Supp. 722 (W.D. Penn. 1949) the Court said (83 F. Supp. at p. 758):

> ". . . no more can an administrative agency such as the National Railroad Adjustment Board rewrite a contract by administrative fiat than a court can by judicial construction."

And in *Irvin* v. *Brown Paper Mills Co.*, 52 F. Supp. 43 (E.D. Ark., 1943), reversed on other grounds 146 F. 2d 232 (8th Cir. 1944), the District Judge observed (52 F. Supp. at p. 45):

> "It is axiomatic that the court cannot make a contract for the parties but can only construe and enforce the contract which they have made; and if there was no meeting of the minds, there is and can be no contract."

It is, of course, a hornbook principle of contract law than an agreement to make an agreement is no agreement at all. *A fortiori*, if a private agreement to agree is a legal nullity, so also must be a governmental or judicial command that parties agree on something.

Rescission of the lease sale transaction is now a physical and financial impossibility. When that transaction was entered into almost four years ago, the Commission acted, so to speak, as head chef. The resulting omelet has not only been beaten and cooked, but has to a large extent been consumed. At this late date, the egg cannot be regurgitated, unscrambled and put neatly back into its shell.

There is today no way to restore the parties to the 1959 lease sale transaction to their *status quo ante*. Texas Eastern cannot put some 165 billion cubic feet of gas back

into the ground. The Rayne Field operating facilities and equipment cannot be made like new. And the income tax hurdle is absolutely insurmountable.

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At page 11 of Opinion No. 378, it is stated that: "We [the Commission] do not think it would be inequitable to require this revision." Even if the Commission were a court of equity, it could hardly cherish any such thought and it certainly would abstain from rendering any such highly inequitable decree as has been issued in this case.

The Commission's expressions of solicitude for the plight of the parties (Opinion No. 378, p. 11) are touching, but provide no comfort at all. The parties have, indeed, encountered "procedural delays" in this case and they have, indeed, made past "contractual arrangements." Those arrangements (the 1959 lease sale transaction) were entered into with the Commission's assistance and blessing. This "complicated situation" from which the parties are now offered "considerable freedom to extricate themselves" did not arise out of the lease sale transaction; it resulted from the Commission's turn-about-face, its belated assertion of jurisdiction where jurisdiction it has none, and its edict that the parties rescind their 1959 transaction and enter into a completely new one. The only feasible method of "extricating" all concerned from "this complicated situation" is the method we are urging: that this Application for Rehearing be granted; that Opinion No. 378 be withdrawn and vacated; and that the Commission once again disclaim jurisdiction.

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C. Errors of the Commission

For the reasons heretofore expressed, we submit that each and all of the statements, findings and orders quoted

above from Opinion No. 278 (*ante*, pp. 80-82) constituted error.

Regulatory difficulties and inconveniences provide no ground for asserting non-existent jurisdiction nor for commanding that the parties' existing contractual-relationship be rescinded and replaced by "new arrangements." Other fallacies and inconsistencies in this aspect of the majority opinion are sufficiently pointed out in Commissioner O'Connor's concurring opinion.

The very fact that the Commission now finds that the provisions of the Rayne Field lease sale transaction "make it difficult if not impossible to subject to regulatory control the price for the sale to an interstate pipeline of this large body of gas," clearly illuminates one of the reasons why Congress has steadfastly refused to empower the Commission to exercise jurisdiction over such transactions: they are not readily susceptible to administrative regulation.

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CONCLUSION

For each and all of the foregoing reasons, Continental hereby requests that the Commission:

(1) Grant rehearing of its Opinion No. 378 and the accompanying Further Findings and Order issued on February 6, 1963;

(2) Withdraw and vacate said Opinion No. 378 and said accompanying Further Findings and Order;

(3) Again disclaim jurisdiction (a) over the transaction of July 27, 1959, by which Continental et al. conveyed and assigned leasehold rights and interests in the Rayne Field to Texas Eastern; (b) over any and all transactions connected with such conveyance and assignment; and (c) over the Assignors by reason of their participation in any and all of the aforementioned transactions;

(4) Again permit Continental unconditionally to withdraw its certificate application in Docket No. G-12432;

(5) Permit the unconditional withdrawal of Continental as a party to this consolidated proceeding which was reopened by the Commission's Order issued on July 14, 1961 (26 FPC 167);

(6) Take no further action and conduct no further proceedings in this consoliadted proceeding, or in any other proceeding or litigation, which is inconsistent

with the opinion of, and remand from, the United States Court of Appeals for the District of Columbia in *Public Service Commission of the State of New York* v. *Federal Power Commission*, decided on December 8, 1960, and reported in 287 F. 2d 143.

Respectfully submitted,

LLOYD F. THANHOUSER
BRUCE R. MERRILL
THOMAS H. BURTON
JOHN M. BERLINGER
Attorneys for
Continental Oil Company

By LLOYD F. THANHOUSER
(Lloyd F. Thanhouser)

Dated at Houston, Texas,
this 4th day of March, 1963

AFFIDAVIT

Before me, the undersigned authority, on this day personally appeared Lloyd F. Thanhouser, who, being by me duly sworn, on oath deposes and says: That he is Vice

President and General Counsel of Continental Oil Company; that he has prepared and read the foregoing Application of Continental Oil Company for Rehearing, and that the facts stated therein are true to the best of his knowledge, information, and belief.

LLOYD F. THANHOUSER
Lloyd F. Thanhouser

Sworn to and subscribed before me, this 6th day of March, 1963.

HALLIE P. MADELEY
Hallie P. Madeley
Notary Public in and for
Harris County, Texas

(SEAL)

4484-4488

CERTIFICATE OF SERVICE

* * * * * * * * * * *

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Docketed Mar. 7, 1963

BEFORE THE FEDERAL POWER COMMISSION

Docket Nos. G-12446, G-12447, G-12432

In the Matters of

TEXAS EASTERN TRANSMISSION CORPORATION
CONTINENTAL OIL COMPANY

Application for Rehearing and Stay of M. H. Marr

Comes now M. H. Marr (Marr), a party to the transaction which is the subject of these proceedings and a person aggrieved by the Commission's Opinion No. 378 and accompanying order issued herein on February 6, 1963,

and, pursuant to Section 19(a) of the Natural Gas Act and Section 1.34 of the Rules of Practice and Procedure, hereby applies for rehearing and a stay of such opinion and order. In support hereof Marr shows as follows:

I.

On July 15, 1957, Marr filed an application in Docket No. G-12885 for a disclaimer of jurisdiction, or, in the alternative, for a certificate of public convenience and necessity under Section 7(c) of the Act to authorize the sale of natural gas from the Rayne Field, Acadia Parish, Louisiana, to Texas Eastern Transmission Corporation (Texas Eastern) for resale. The contract under which such sale was to be made was

cancelled and the application was withdrawn. Such withdrawal of the application was permitted to become effective August 16, 1958 and the record closed as of such date pursuant to the Acting Secretary's letter of August 12, 1958, written at the direction of the Commission.

The Commission's Opinion No. 378 and accompanying order purport to affect Marr's rights and interests and to make Marr a party to these proceedings in order to accomplish its objective, namely, to abrogate a consummated agreement. Consequently, Marr is aggrieved by such action and has a direct and vital interest in such action and, as a consequence, has standing within the contemplation of Section 19(a) of the Act and the Rules of Practice and Procedure to maintain this application.

II.

It must be recognized at the outset that the lease sale arrangement which the Commission seeks to abrogate is a consummated transaction. In accordance with the terms of such arrangement millions of dollars have changed hands,

Texas Eastern has acquired leases covering roughly a trillion cubic feet of natural gas reserves, and as a result the conduct of the parties in other business matters has been substantially influenced by the consequences of the execution of the lease sale arrangement.

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For example, the Internal Revenue Service has granted to Marr a formal ruling to the effect that the lease transfer and sale in the form provided in the lease sale agreement were of leasehold rights subject to capital gains tax rate rather than ordinary rates. This tax ruling was the determining factor in Marr's decision to sell his leasehold interests and had it not been granted, Marr would not have entered into the lease sale agreement. It is submitted that such ruling of the Internal Revenue Service cannot be negated by a collateral action of this Commission. These are real, practical considerations which the Commission has ignored. The simple fact is, aside from the Commission's lack of jurisdiction, that as a practical matter all of the results which have flowed from the execution of the lease sale agreement cannot be unscrambled on a *nunc pro tunc* basis and the clock turned back to 1958.

Nevertheless, the Commission having determined that it has jurisdiction over the lease sale arrangement concludes that because of the "deficiencies" in such arrangement it must be "rescinded" and a new contract entered into effective from the date of first deliveries from the Rayne Field (pp. 10-11). Such new substitute contract is required to be recast in a form which will enable the Commission "to fix just and reasonable" rates and which will be adaptable to any area rate determination (p. 9).

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By its Opinion No. 378 and accompanying order the Commission purports to set the controlling standards for a new

contract required to rescind the lease sale arrangement and to be in substitution therefor. Such a requirement, if effectuated, would operate to alter and affect adversely the contractual rights of Marr and the other sellers[1] under the lease sale arrangement and, in addition, would have serious adverse effects upon other business relations which have been entered into by Marr as a consequence of having executed such arrangement and which relations are not remotely subject to this Commission's jurisdiction (See: *Columbia Broadcasting System* v. *United States*, 316 U.S. 407, 422 (1942)). Marr has specifically planned and arranged his past and future general financial affairs based on the lease sale arrangement of July 27, 1959, and the monies payable to him pursuant to the terms thereof. Such requirement of the Commission would result in a deprivation of Marr's rights and property and would cause him substantial and irreparable injury.

III.

For purposes of this application for rehearing and stay Marr assumes that Opinion No. 378 and the accompanying

order make him a party to this proceeding and therefore such opinion and order are erroneous, unlawful and of no force and effect as to Marr because Marr was afforded no notice or opportunity for hearing with respect to the issues determined herein and for the further reasons that the Commission has no jurisdiction: (1) over the lease sale transaction, (2) to require the rescission of the lease sale arrangement, (3) to require that a substitute agreement be entered into to displace the lease sale arrangement, (4) to require that a new substitute contract for the lease sale

[1] Continental Oil Company, Sun Oil Company and General Crude Oil Company, together with other "minority leaseholders" (p. 2).

arrangement be made effective retroactively to the date of first deliveries of gas from the Rayne Field, (5) to require as provided by ordering Paragraph (B) that Marr "make filings of appropriate rate schedules and applications for certificates of public convenience and necessity" (p. 12) and (6) to require as further provided by Paragraph (B) that Texas Eastern "file a revised application for a certificate to put into effect a new arrangement for the supply of gas to Texas Eastern from the Rayne Field in conformity with this opinion, the public interest and the Natural Gas Act." The Commission further erred in that its findings are not supported by substantial evidence and are contrary to the evidence.

IV.

Although the Commission treats Marr as a party to this proceeding, Marr has had no notice or opportunity for a

hearing on the issues determined by Opinion No. 378 and the accompanying order in violation of the requirements of the Natural Gas Act, the Administrative Procedure Act and the decisions of the Supreme Court of the United States.

The Commission in adopting such opinion and order has purported to act under Sections 4 and 7 of the Natural Gas Act, but it is clear that both of such sections of the Act contemplate that notice and hearing be first afforded before action adverse to any person is taken with respect thereto. It is equally clear that before a jurisdictional determination is made under Section 1(b) of the Act notice and opportunity for hearing must first be provided.

Similarly, under the Administrative Procedure Act, Section 5 requires that in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, timely notice must be provided with

respect to, *inter alia*, "the matters of fact and law asserted" and an opportunity must be afforded for hearing (See also Section 7(c)).

The Supreme Court has recognized these rudimentary prerequisites of due process on numerous occasions but it is necessary here to mention only a couple of the landmark cases. In *Morgan* v. *United States*, 304 U.S. 1, the Court stated as follows (pp. 18-19):

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> "* * * Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised what the Government proposes and to be heard upon its proposals before it issues its final command."

In *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U.S. 197, the Supreme Court held that contract rights of a party cannot be invalidated without an opportunity to be heard, stating as follows (p. 233):

> "The Brotherhood and its locals contend that they were indispensable parties and that in the absence of legal notice to them or their appearance, the Board had no authority to invalidate the contracts. The Board contests this position, * * *. We think that the Brotherhood and its locals having valuable and beneficial interests in the contracts were entitled to notice and hearing before they could be set aside. * * * The rule, which was applied in the cases cited to suits in equity is not of a technical character, but rests upon the plainest principle of justice, equally applicable here."

See also: *Northeastern Gas Transmission Co.* v. *Federal Power Commission*, 195 F. 2d 873; *cert.* denied, 344 U.S. 818.

It is clear from the foregoing that the Commission's Opinion No. 378 and the accompanying order are invalid

as to Marr since Marr has been denied the due process of law to which he is entitled.

V.

In its Opinion No. 322 in these proceedings, issued June 23, 1959, approving the construction and operation of

facilities by Texas Eastern to take the Rayne Field gas the Commission found (21 F.P.C. 860, at page 864):

> "* * * Texas Eastern has not filed an application for a certificate authorizing the acquisition of the Rayne Field leases *and we have no authority to issue such a certificate*" (Italics supplied).

Thus, contrary to the statement in the Commission's current Opinion No. 378 (page 5) there was "discussion" by the Commission of the jurisdictional issue in its Opinion No. 322, and it held that it lacked jurisdiction.

Moreover, on appeal, the Court of Appeals for the District of Columbia Circuit, in *Public Service Commission* v. *Federal Power Commission*, 287 F. 2d 143, specifically discussed the jurisdictional issue in its decision, at several points, as follows (page 145):

> "The significance of this change in the form of the transaction, at least from the standpoint of the producer-sellers, is manifest. Sales of natural gas by an independent producer are subject to Commission regulation under Sections 4 and 5 of the Natural Gas Act. *Phillips Petroleum Co.* v. *State of Wisconsin*, 1954, 347 U.S. 672, 74 S. Ct. 794, 98 L. Ed. 1035. But the Commission has been held to lack jurisdiction over gas leases. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 1949, 337 U.S. 498, 69 S. Ct. 1251, 93 L. Ed. 1499. * * *"

Further, the Court stated (page 146):

> "It is of no importance here that the transactions by which Texas Eastern proposes to acquire the gas will themselves be, by virtue of a change in form, *beyond the regulatory control of the Commission*" (Italics supplied).

Despite this clear and unequivocal discussion and holding by the Court of Appeals in this case, the Commission now, in its Opinion No. 378, seeks to minimize the effect of and to discard the Court's finding that it lacks jurisdiction. The Commission erroneously states that the Court "without discussion" held that the Commission lacked jurisdiction. Furthermore, the Commission erroneously states that the jurisdictional question was "hardly considered" and was given but "passing mention" by the Commission and the Court (Opinion No. 378, page 5). The Commission thus attempts to repudiate the finding of the Court of Appeals in this very case by erroneously accusing the Court of not seriously considering the jurisdictional issue. If any further proof were needed that the question of jurisdiction over the transaction was considered in the case, a reference to the Commission's brief in the Court reveals that it repeatedly emphasized the Commission's lack of jurisdiction and cited authorities to support its position.

VI.

The Commission erroneously concludes in Opinion No. 378 (page 7) that the instant proceeding is "distinguishable" from that involved in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498. That case is directly

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in point and constitutes a precedent which precludes the assertion of jurisdiction by the Commission over the transfer of leases here involved.

The Commission's first ground of purported distinction is the assertion that in the *Panhandle* case "the leases were undeveloped so that the transfer did not resemble a sale of gas as did the sale of developed leaseholds here" (page 7). The opinion of the Supreme Court in the *Panhandle* case clearly discloses that it was not based upon the narrow ground advanced by the Commission. Repeatedly throughout its opinion the Supreme Court referred to "gas leases" as such, and without distinction as to development or nondevelopment, as an "essential part of production" and therefore beyond the Commission's jurisdiction because of the "production and gathering" exemption in Section 1(b) of the Natural Gas Act (337 U.S. at pages 505, 508, 513, 515). Moreover, it is equally clear from the Supreme Court's opinion that it was aware of the fact that exploration and development had taken place sufficiently to enable reserve estimates to be made. Thus, the majority opinion of the Court recites that Panhandle "had included the acreage here involved as part of its gas reserves." Justice Black, in his dissenting opinion, stated that (337 U.S. at page 519):

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> "* * * According to allegations in the Commission's complaint the respondent gas company has already received from its customers large sums of money from rates which reflected expenses incurred in maintaining these reserves and for exploration and development costs in relation to them."

An examination of the complaint which the Commission filed in the United States District Court demonstrates the

extent to which exploration and development activities had actually taken place on the gas acreage involved in the *Panhandle* case. Thus, the Commission alleged in its complaint in the United States District Court (Paragraph XVII) that:

> "The delay rentals, renewal bonus payments and other exploration and development costs relating to the aforesaid natural-gas leases included by the Commission in Panhandle's operating revenue deductions in the rate proceedings referred to in Paragraph (c) of the Commission's order of November 10, 1948, Exhibit 'B' hereto, amount to date to a sum in excess of $665,000."

The gas leases involved in the *Panhandle* case had been explored and developed sufficiently to result in an accepted gas reserve estimate of 700 billion cubic feet (337 U.S. at page 500). It stands to reason that an estimate of such a substantial reserve, comparable in magnitude to that in the Rayne Field, could not have been made or accepted without adequate exploration and development. Moreover, nowhere in any of the decisions in that case was there any refutation of the fact that substantial "exploration and development costs" had been incurred prior to the transfer

of the leases. The facts of the *Panhandle* case are precisely parallel with the instant one in this respect because the Commission has itself recognized and stated, in its Opinion No. 378, that the gas leases here involved "had been developed to an extent where reasonable estimates could be made as to the available reserves," (Opinion No. 378, page 6).

The second purported ground of distinction of the *Panhandle* case is the assertion by the Commission in Opinion No. 378 that "the reserves here are connected or

are to be connected to an interstate pipeline and are to be sold in interstate commerce while those in *Panhandle* were transferred to a corporation which subsequently sold them in intrastate commerce" (pages 7-8). Here again, the Commission obviously has groped for a purported distinction which has no substance whatever. The Supreme Court in the *Panhandle* case did not predicate its decision upon the circumstance that the gas which might be produced from the leases involved in that case was to be sold intrastate. Rather, the Court repeatedly emphasized that the Commission was prohibited by the provisions of the Natural Gas Act from interfering in the forbidden area of transfer of gas leases because gas leases and gas reserves are production facilities over which the Commission has no jurisdiction and because the transfer of gas leases and gas reserves is a production activity over which the

Commission has no jurisdiction. Among other things, the Supreme Court said (337 U.S. at pages 513-514):

> "The District Court found as a fact, and the finding is undisputed by the Commission, that, 'it has been the practice in the natural gas industry for companies to trade freely in gas leases, and the Commission has never heretofore asserted the right to regulate transfers of such leases.' Thus for over ten years the Commission has never claimed the right to regulate dealings in gas acreage. Failure to use such an important power for so long a time indicates to us that the Commission did not believe the power existed. In the light of that history we should not by an extravagant, even if abstractly possible, mode of interpretation push powers granted over transportation and rates so as to include production. If possible all sections of the Act must be reconciled so as

to produce a symmetrical whole. We cannot attribute to Congress the intent to grant such far-reaching powers as implicit in the Act when that body has endeavored to be precise and explicit in defining the limits to the exercise of federal power" (Footnotes omitted).

With the exception of this *Panhandle* case where the Commission was overruled, ever since the enactment of the Natural Gas Act in 1938 and ever since the decision of the Supreme Court in *Phillips* the Commission has never heretofore attempted to exercise jurisdiction over gas leases or the transfer of gas leases.

The third purported distinction of the *Panhandle* case relied upon by the Commission is the erroneous statement that "in the *Panhandle* case the gas reserves passed entirely out of the control of the seller while here the seller retained rights to oil, gas if found other than in particular

strata, production payments for liquids, and management of the field" (Opinion No. 378, page 8). In the first place, Marr retained no rights whatsoever in the gas leasehold estates which he sold except only his mortgage lien to secure unpaid portions of the consideration. Marr retained no management rights over any of the gas leasehold estates which he sold. In the second place, the Commission completely disregards the fact that the Supreme Court in the *Panhandle* case dealt with gas leases as production facilities and the transfer of gas leases as an activity of production. In addition, the Commission is factually incorrect when it asserts that in the *Panhandle* case the "gas reserves passed entirely out of the control of the seller." The Supreme Court's decision in that case recites that Panhandle retained "the option to purchase on or after January 1, 1965, all or part of the gas produced

from this land" (337 U.S. at page 500). Thus, the *Panhandle* case involved a reservation of the right to purchase all or part of the gas produced representing a considerably more far-reaching retention of rights than the normal security for payment of consideration retained by Marr.

The Commission next purports to rely upon the Supreme Court's decision in the *Phillips* case (347 U.S. 672), apparently for the premise that the *Phillips* case was intended

to overrule the prior *Panhandle* case. In reaching this conclusion, the Commission disregards the fact that the Supreme Court, when it decided the *Phillips* case, was well aware of its prior decision in the *Panhandle* case. Rather than overruling the latter case in any respect, it was cited and relied upon by the Supreme Court when it decided *Phillips* (347 U.S. at page 678). Moreover, the Court of Appeals for the District of Columbia Circuit, when it decided the instant case, cited both the *Phillips* and *Panhandle* cases and distinguished them when it held the Commission to be without jurisdiction over gas leases. The Court said (287 F. 2d 143 at page 145):

> "* * * Sales of natural gas by an indepent producer are subject to Commission regulation under Sections 4 and 5 of the Natural Gas Act. *Phillips Petroleum Co.* v. *State of Wisconsin*, 1954, 347 U.S. 672, 74 S.Ct. 794, 98 L.Ed. 1035. But the Commission has been held to lack jurisdiction over gas leases. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 1949, 337 U.S. 498, 69 S.Ct. 1251, 93 L.Ed 1499. * * *"

In this respect also the Commission has defied the decision of the Court of Appeals for the District of Colum-

bia Circuit in this very case. We have noted the fact that the Commission has heretofore announced, in *Cities Service Gas Co.*, 26 F.P.C. 665, 666, that "we are not bound by the decision of one circuit." We are further amazed by the Commission's statement in *Lo-Vaca Gathering Co.*, 26 F.P.C. 606, 615,

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that, to the extent to which a court decision "may be inconsistent with the action we take here, we believe it was erroneosuly decided." However, this is the first instance we know of where the Commission has dared to defy the ruling of a Court of Appeals in the same case under consideration. The consequences and implications of this course of action, if permitted, would effectively destroy the rights of parties to court review and render the decisions of the courts meaningless.

The citation by the Commission of the cases of *Saturn Oil & Gas Co.* v. *Federal Power Commission*, 250 F. 2d 61 and *Continental Oil Company* v. *Federal Power Commission*, 266 F. 2d 208, is equally without merit. In the *Saturn* case, the Court specifically gave effect to the doctrine of the *Panhandle* case when it stated (250 F. 2d at page 68):

> "In *Interstate Natural Gas Co. v. Federal Power Commission* and *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.* the court recognized that effect must be given the production or gathering exemption. These cases and *Colorado Interstate Gas Co.* v. *Federal Power Commission* are referred to in the Phillips decision as holding that the production or gathering exemption applies to the physical activities, facilities, and properties used in the production and gathering of natural gas and not to the business of production and gathering. Until there is a sale of the

natural gas produced by such operations and installations in interstate commerce for resale, they are exempt. In the event of such a sale the jurisdiction of the Commission applies but only because of the sale and only to the extent that the Natural Gas Act confers jurisdiction."

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In the *Continental* case the Court also gave effect to the *Panhandle* case stating that (266 F. 2d at page 210) "Although not specifically so providing, the language of this exemption [Section 1(b) exemption of production or gathering] has, as to other types of facilities, been held to cover facilities of production or gathering. See *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company*, 337 U.S. 498, 504-505." The basis for the Court's decision was that "this record discloses that these are facilities for the sale of the gas that are not facilities of production" (266 F. 2d at page 211).

It is apparent that these cases confirmed the holding of the Supreme Court in the *Panhandle* case and in no manner constitute precedents for overruling that decision as the Commission has here attempted. Furthermore, the *Saturn* and *Continental* cases as authority for the Commission's position here are not applicable because there are no facilities retained or owned by Marr which could be or are used for the production of gas. Therefore, the Commission's attempted reliance upon these cases is refuted by the Commission's own statement in Opinion No. 378 (page 8) that in those cases " 'production' was complete before the point of sale." This language supports our own position, based upon the factual situation here, where the leases and all facilities were sold by Marr before production for sale or transportation in interstate commerce occurred.

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VII.

The extent to which the Commission flagrantly and avowedly seeks, by its Opinion No. 378, to extend its jurisdiction beyond that conferred upon it by Congress in the Natural Gas Act is well illustrated by the conclusionary language on pages 8-9 of Opinion No. 378, where the Commission states:

> "'Thus we conclude that a sale of gas in interstate commerce during the course of production and gathering is subject to our jurisdiction. Likewise, the sale of gas (or reserves) made under the circumstances here involved by the producers to Texas Eastern for transportation in its pipeline is a sale of gas for resale in interstate commerce and is subject to our jurisdiction."

The omission from the first sentence and the first clause of the second sentence of the foregoing quotation of the words "for resale" when referring to the "sale of gas" or the "sale of gas (or reserves)" is especially significant. The Commission's reasoning seems to be that *any* sale of gas *should* be subject to its jurisdiction. Thus, it would disregard the requirement that a sale must be for resale to be subject to its jurisdiction. To attain this objective, forbidden by Congress and the Supreme Court, the Commission is now saying that any sale of *property* which contains gas in formation is subject to its jurisdiction. Moreover, by the insertion of the parenthetical words "or reserves" the

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Commission magnifies the illegality of the conclusion it has reached and directly defies the Supreme Court's opinion in

the *Panhandle* case where "gas leases" and "gas reserves" were considered synonomous and distinguished from sales for resale of natural gas. The boot-strap reasoning which the Commission engages in to justify its assertion of jurisdiction is apparent and is patently unlawful.

The Commission next attempts to justify its assertion of jurisdiction on the ground of administartive expediency (Opinion No. 378, page 9). This ground, when it results in expanding the Commission's statutory jurisdiction, has been rejected by the Courts. See, for example, *Mississippi River Fuel Corp.* v. *Federal Power Commission*, 202 F. 2d 899. As stated by the Supreme Court in *Civil Aeronautics Board* v. *Delta Air Lines*, 367 U.S. 316, 322, "the fact is that the Board is entirely a creature of Congress and the determinative question is not what the Board thinks it should do but what Congress has said it can do." And as further stated by the Supreme Court in *Federal Power Commission* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 8, "However, respondents correctly point out that Congress, in enacting the Natural Gas Act, did not give the Commission comprehensive powers over every incident of gas production, transportation and sale. Rather, Congress was 'meticulous' only to invest the Commission with authority

over certain aspects of this field, leaving the residue for state regulation."

VIII.

In its Opinion No. 378 (pages 5-6) the Commission indulges in an obvious misinterpretation of its order of July 14, 1961, reopening these proceedings (26 F.P.C. 167) issued after the decision of the Court of Appeals for the District of Columbia Circuit. This order reopening the

proceedings first quotes from the next to the last paragraph of the Court's decision (287 F. 2d at page 146) where the Court stated that "Two courses are open to the Commission." The first course, which contemplated clarification of the order under review, was rejected by the Commission. The second suggested course authorized the Commission to "reopen the record in the certificate proceeding to permit Texas Eastern to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity." In selecting the second course, the Commission stated that it would "reopen the record in this proceeding to afford Texas Eastern an opportunity to make that showing contemplated by the Court's aforequoted latter course."

Thus, the proceedings were reopened in accordance with the Court of Appeals decision. And this is the same Court of Appeals decision which held that the Commission lacked

jurisdiction over the transfer of leases insofar as the producers were concerned. In Opinion No. 378, however, the Commission has attempted to distort the language and intent of its order of reopening by seizing upon the language of the order which purported to define "but not necessarily limit" the issues as justification for considering the question of jurisdiction at this time. The necessary effect of the Commission's action is to accept the Court's decision only in part, and to disregard the portion of the Court's decision which, as we have demonstrated, clearly held the Commission to be without jurisdiction. The Commission also mentions the language in its order reopening the proceeding wherein it referred to whether the certificate should be "reissued in whole or in part." Certainly this language cannot legally be construed to authorize the Com-

mission to follow the Court's decision only "in part" as the Commission does in Opinion No. 378.

IX.

The Commission further seeks to justify its unlawful assumption of jurisdiction on the premise that "the producers transferred natural gas to Texas Eastern for resale by Texas Eastern in the interstate market." In this discussion (Opinion No. 378, pages 6-7) the Commission states that it should look beyond the "label" of the transaction to its essence, and that

"the effect resembles the ordinary sale of gas" because of certain "features" enumerated by the Commission. No one or all of the five asserted "resembling features" set forth by the Commission in any manner transform the assignment and conveyance here involved, which has already been fully consummated, into a contract for the sale of gas for resale, as attempted by the Commission. The transaction was a transfer of leases and not a sale for resale of natural gas and the Commission cannot convert the transaction into a sale for resale.

The short answer to this discussion by the Commission is that if the transaction were a sale for resale there would be no occasion for the Commission to attempt to rescind the transaction and require a sale for resale contract to be entered into. In other portions of Opinion No. 378 (page 2) the Commission clearly recognizes the correct nature of the transaction and its later effort in Opinion No. 378 to convert it into a sale for resale serves only to emphasize the extent to which the Commission has been willing to go in order to enlarge its jurisdiction beyond that conferred by the Natural Gas Act.

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On page 11 of Opinion No. 378, in its discussion under the heading "Disposition of These Proceedings" the Commission recites that the "lease sale arrangement should be rescinded" and a "new contract" be entered into. Assuming, *arguendo*, that the Commission has jurisdiction over this transaction (which Marr denies), nevertheless, this requirement is patently unlawful. There is no provision in the Act which authorizes the Commission to direct that binding contracts, such as the Assignment and Conveyance, the Promissory Notes, and the Act of Mortgage and Pledge here involved, be rescinded and a "new contract" be entered into. The Commission has obviously attempted to assume powers not granted to it in the Natural Gas Act. *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 338.

Moreover, to compound its erroneous and unlawful assumption of power, the Commission is apparently attempting to make its decision retroactive, for it states, on page 11 of Opinion No. 378, that "The new contract, of course, would be effective from the delivery of the first gas from the Rayne Field and would be a substitute for the lease sale arrangement now proposed." It has been established beyond

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controversy that the Commission does not possess any power retroactively to fix rates such as it contemplated by the requirement that a "new contract" be entered into, *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 618; *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Co.*, 341 U.S. 246.

Furthermore, it has been held that any condition attached to a certificate issued by the Commission, such as attempted here to be imposed upon Texas Eastern, must be

consonant with the Commission's authority under other provisions of the Act. *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 508; *Central West Utility Co.* v. *Federal Power Commission*, 247 F. 2d 306; *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 204 F. 2d 675, 680. Moreover, it has been judicially determined that in a Section 7 certificate proceeding the Commission must make findings, in accordance with the statute, of present or future, rather than past, public convenience and necessity, *City of Pittsburgh* v. *Federal Power Commission*, 237 F. 2d 741, 752; *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 236 F. 2d 289, 292.

Under the foregoing and other decisions, which could be cited, the Commission's attempt here to give retroactive effect to its findings is clearly invalid.

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XI.

In addition to the ultimate errors in the findings and orders contained in Opinion No. 378 which are of such consequence as to merit the grouping for discussion hereinabove set forth, there are many errors of fact and conclusion which in total contribute to the erroneous action taken by the Commission.

On page 2, paragraph 1, the Commission errs in failing to state the gap in time between the concellation of Marr's conventional contract of sale of gas and notice of withdrawal of application for certificate of public convenience and necessity on July 16, 1958, and the execution of the Lease Purchase Agreement on December 4, 1958, during which time no interest or claim or contractual right of any kind existed in Texas Eastern in Marr's properties, or the right to gas which might be produced therefrom.

By this means the erroneous conclusion is arrived at that there was an uninterrupted process by which Texas Eastern merely "amended its application to reflect a change in its plan for acquiring the Rayne Field gas." In fact, it abandoned its plan to buy gas, and bought leases instead.

On page 2, paragraph 2, the Commission errs in stating that "The difference is solely in contractual arrangements." The difference is one of substance between acquiring

a recognized interest in leases, a real right under the law of Louisiana, and an executory contract to receive personal property (gas) as delivered and to pay by the unit for such personal property after delivery.

On page 2, paragraph 2, it is error to state that "the facilities to be built by Texas Eastern would be essentially the same." Texas Eastern bought, and operates entirely by itself, a gathering system and central dehydration facilities and was required to provide extraction plant processing facilities, none of which were required of it under the former gas sales contracts.

On page 2, paragraph 2, it is error to state that there were only 16 promissory notes, rather than 16 for each seller of gas leasehold interests.

On page 2, paragraph 2, it is error to describe the production payment as "covering all liquids to be extracted from the gas," when in fact it was payable in money, *based on the value of liquids* extracted. Such liquids, being gas throughout the production process, belonged entirely to Texas Eastern when produced from the gas leaseholds, and were not retained by the sellers.

On page 2, paragraph 2, a serious error in referring to the Lease Sale Agreement is made by stating that it "is subject to certain conditions," implying that it is an existing

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and operative document. This error continues throughout Opinion No. 378, because of the Commission's failure to recognize that it is nothing more than the familiar "Contract of Sale" by which land is uniformly bought and sold. It was merged by the Assignment and Conveyance on July 27, 1959, and has no present existence. The owner of land holds under his deed, not the preliminary contract of sale. Perhaps the Commission finds it easier to think of cancelling an executory document than one executed over four years ago, but this does not make it so.

On page 2, paragraph 3, the Commission errs in stating that "Based on total recoverable reserves of 990,000 MMcf Texas Eastern acquired approximately 79 percent under the original leasehold acquisition transaction in 1958."

Since Texas Eastern bought leasehold interests, it got the right to produce whatever the leases contained, whether 500 billion Mcf or one trillion and 500 billion Mcf. Neither quantity, estimated or produced, would alter the fact that Texas Eastern acquired the right to produce 100 per cent of the gas covered by each lease, and the total reserves so covered were estimated at 95 per cent of the reserves in the sale area.

The refusal of the Commission to recognize substantial difference between a concept of "reserves" as

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"gas in place," and on the other hand at lease rights to produce gas, leads to this error. The first concept is legally impossible, in Louisiana. No one can own gas in place. Conversely, a lease grants the right to produce *all* the gas one can, including that on which royalty must be paid. There is no "royalty gas" owned as such either in place, or even after production under the typical lease. The lease owner owes royalty in money, based on the value of the royalty fraction of the total.

On page 3, the first incomplete paragraph, the Commission errs in construing the leaseholds purchased to cover only 81.5 per cent of the reserves. They cover nearly 100 per cent. It is correct that these leases carry a royalty burden equal to approximately 18 per cent of the reserves. However, the right to this gas as produced inheres in the leaseholds. Texas Eastern does not buy or "pay for it." It accounts in cash, based on a judgment of market value under the lease terms, which may be more or less than 22.6 cents per Mcf through the life of production.

On page 4, paragraph 2, the Commission errs to the extent that its reference to the Examiner's initial decision of June 29, 1962, may imply a finding in Opinion No. 378 that there was a dedication of the Rayne Field gas to the interstate market as of April 22, 1957. No gas was produced by

anyone for delivery to the interstate market before August, 1959, and then only by Texas Eastern.

On page 4, the third complete paragraph, the Commission erroneously refers loosely to an issue of jurisdiction over "the lease sale arrangement." As demonstrated above, this is not descriptive of any identifiable document or set of documents. The operative instruments are an Assignment and Conveyance from Marr to Louisiana Gas, Notes from Louisiana Gas to Marr, Act of Mortgage and Pledge from Louisiana Gas to Marr, and Conveyance from Louisiana Gas to Texas Eastern. It is prejudicial and lacking in specification adequate to inform Marr or a reviewing court as to the meaning of the Commission to refer to an "arrangement." The purpose of the Commission to use this inexactitude to color the characterization it gives a normal mineral rights transaction becomes evident as it proceeds.

On page 4, last paragraph, it is error to hold as to Marr that "what was to be a sale of gas has been converted into a sale of leases." The evidence is undisputed that Marr cancelled his contract and withdrew his application for certificate *unconditionally* on July 16, 1958, without any strings on it or Texas Eastern. Either party was free to walk away for five months thereafter. Texas Eastern's application to reopen in September, 1958, was only in a fond hope of buying Marr's

leases. It had no assurances that it could buy from Marr either leases or gas on that date.

Additionally, the term "conversion" is without specific meaning, beyond the continued and unjustified effort of the Commission to choose terms of coloration to suggest an undisclosed commitment to tie the gas sale to the lease sale. There was none, and there is no evidence of such.

On page 4, last paragraph, Marr objects to the error in the Commission's language purporting to cast aside any evidence of form as being of no substance, saying it is immaterial "whether technically in the form of leasehold transaction or otherwise." This reasoning, if unchallenged, would be equally appropriate to an outright deed to lands containing gas, and to the familiar oil, gas and mineral leases thereof. The forms of real property and mineral law have established meaning in substance which the Commission cannot brush so lightly aside.

On page 6, paragraph 2, the Commission errs in referring to "the in-place sale of the Rayne Field gas to Texas Eastern." There is no legally recognizable sale of gas in place under Louisiana law. One may only own the land or the right to produce minerals therefrom (as by a lease), or one may own gas after severance by production. No one can own, or sell, gas in place. This error is materially

prejudicial to Mar in that it shifts words in order to make a lease assignment look like a gas sale.

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On page 6, paragraph 2, the Commission errs in its argument that any conveyance of property which may be capable of producing gas must be regulated because it assumes the local law does not so regulate. The "gap" argument, so stated, would apply equally to a sale by simple deed, to the oil and gas lease, to a sale of royalty and to a mortgage. All these transactions are subject to State and local law and cannot, as expert testimony in this case reflects, be arranged at the whim of parties. There is no evidence of any limitation on the right of the state to employ other regulation on transfers of interest in land within its borders. No "gap" is shown, nor any conflict. The two sovereign's powers join precisely here.

On page 6, paragraph 3, the Commission errs in saying that this gas, still in the formation, "was sold in bulk." Gas cannot be sold either in bulk or by the unit while unproduced, under the law of Louisiana. If sold after severance, the only way it could be sold would be on a per Mcf or other unit basis. If unproduced, the only way to obtain the gas is to buy the land, or the leasehold right in land permitting production from the land. The truly prejudicial error is the laying of the foundation in semantics for the slide from "bulk" to "wholesale" at a later point, where the meaning of the latter term is to be given a reincarnation never intended in the Natural Gas Act.

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On page 7, numbered paragraph 4, it is error to say that the management agreement provides for Continental to operate "the field," when it is only the assigned leasehold interests to which it applies. Functions of parties Seller in the remainder of the field are not involved. Further,

as pointed out before, Texas Eastern itself operates the gathering system and central dehydration facilities.

On page 7, numbered paragraph 5, the Commission errs in saying Texas Eastern is not bound by the principal obligation. It is not liable personally, but it holds its leases securely bound by note indebtedness and mortgage liens, subject to which it purchased from Louisiana Gas.

On page 8, first complete paragraph, the Commission erred in its interpretation of *Phillips* as referring to "'wholesales of natural gas in interstate commerce'' as including the instant transaction, regardless of the *Panhandle* case, on the theory that this is a "bulk" sale, which is assumed to be synonymous with a "wholesale." As used in *Phillips* and under the Act, the term "wholesale" relates only to the "sale for resale" provisions.

On page 10, first complete paragraph, three is prejudicial error in the statement that "What is objectionable here is the attempt to disguise a transaction which in effect is a sale of gas by casting it in the form of a sale of

leases * * *." There is no evidence to support this charge of devious purpose. All the evidence is that this transaction has been exposed for the public view since 1958. No single concealed purpose, sub-rosa action, or misrepresentation beneath the facts shown in the documents exists. Unless one accepts the evident Commission view that it should regulate all natural gas properties contra *Panhandle*, there is no "disguise" involved in refusing to sell gas in interstate commerce. There is no questionable device presumed when one sells his leases in preference to selling gas. If there is, a "natural gas company" now is anyone owning land under which there may be gas. He cannot even turn away by trying to sell the land. This is a "disguise" only in terms of an unwarranted grab for ungranted power by the administrative agency.

On page 11, finding (1), it is erroneous to find that Marr is a producer of natural gas and a natural gas company "by participation in the Lease Sale Agreement" for reasons set forth heretofore.

On page 11, finding (2), the Commission wrongfully finds that "The Lease Sale Agreement referred to above represents sales of natural gas for resale in interstate commerce," for reasons discussed above.

On page 12, finding (7), the Commission erroneously describes Marr and other sellers as "suppliers of gas," for reasons fully presented in this application.

XII.

As shown above, the requirements of the Commission's Opinion No. 378 and accompanying order would cause Marr substantial and irreparable injury by requiring that he enter into a new and different contract to be substituted for the lease sale agreement on a *nunc pro tunc* basis to be effective as of the date of the commencement of deliveries of natural gas from the Rayne Field. It is abundantly clear that such a requirement would have a serious adverse impact upon Marr's financial situation not just confined to the Rayne transaction but others which have been entered into as a result of the consummation of that agreement. Positions have been taken, money has been expended and obligations assumed all as a result of the execution of the lease sale agreement.

It is equally clear that the action taken by the Commission here can be regarded as of first impression, is without precedent, is new and novel and for the reasons set forth above, involves serious and substantial questions as to its validity and whether it will withstand the test of judicial scrutiny. Consequently, to preserve the *status quo* pending a

final determination of these matters, it is necessary that a stay of Opinion No. 378 and the accompanying order of February 6, 1963 be granted.

WHEREFORE, for all of the foregoing reasons, M. H. Marr requests the Commission to grant this application for rehearing and to reverse and set aside its Opinion No. 378 and accompanying order. If the Commission should not grant this application, M. H. Marr requests that the Commission stay Opinion No. 378 and the accompanying order pending judicial review.

Respectfully submitted,

M. H. MARR

By DONLEY C. WERTZ
Donley C. Wertz
His Attorney

DONLEY C. WERTZ
2500 Republic National Bank Building
Dallas, Texas

MAY, SHANNON and MORLEY
1700 K Street, N. W.
Washington 6, D. C.
Attorneys for M. H. Marr

DISTRICT OF COLUMBIA, SS:

Donley C. Wertz, being first duly sworn, deposes and says that he is an attorney for M. H. Marr; that as such he has signed the foregoing "Application for Rehearing and Stay of M. H. Marr" for and on behalf of M. H. Marr; that he is authorized so to do; that he has read said Application and

is familiar with the contents thereof; and that the matters and things therein set forth are true and correct to the best of his knowledge, information and belief.

DONLEY C. WERTZ
Donley C. Wertz

Subscribed and sworn to before me, a Notary Public, this 7th day of March, 1963.

THOMAS C. EVANS
Thomas C. Evans
(Seal) *Notary Public*

My Commission expires September 14, 1965.

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CERTIFICATE OF SERVICE

* * * * * * * * * * *

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Docketed March 8, 1963

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket Nos. G-12446, G-12447, G-12432

TEXAS EASTERN TRANSMISSION CORPORATION
CONTINENTAL OIL COMPANY

Application by Texas Eastern Transmission Corporation for Rehearing of Opinion No. 378 and Order Issued February 6, 1963

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Now Comes Texas Eastern Transmission Corporation (Texas Eastern), pursuant to Section 1.34 of the Commission's Rules of Practice and Procedure and Section 19(a) of the Natural Gas Act, and files this its Application for Rehearing complaining of the Commission's Opinion No. 378 and order issued in the above captioned proceeding on February 6, 1963.

Specification of Errors

1. The Commission erred in finding that it is not in the public interest for the Commission to certificate a transaction such as the one presented to it on the record in this case.

2. The Commission erred in finding that the Rayne Field transaction is not in the public interest as a way to acquire gas supplies.

3. The Commission erred in finding that it was free to reexamine the jurisdictional question related to the Rayne Field lease acquisition and to reverse the nonjurisdictional finding of its former

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Opinion No. 322 issued June 23, 1959, as well as the finding of the Court of Appeals that "the Commission has been held to lack jurisdiction over gas leases."

4. The Commission erred in finding that the jurisdictional issue was comprehended in the issues set for trial and determination by its order of July 14, 1961, reopening the record in these proceedings.

5. The Commission erred in failing to follow the mandate of the Court of Appeals.

6. The Commission erred in finding that the sale of the Rayne Field leases by Continental, Sun, Marr and General Crude represents sales of natural gas for resale in interstate commerce which are subject to its jurisdiction under the Natural Gas Act.

7. The Commission erred in finding that the present case is distinguishable from that involved in *FPC* v. *Panhandle Eastern Pipe Line Company*, 337 U.S. 498.

8. The Commission erred in holding that the Rayne Field lease acquisition constituted an attempt to disguise a transaction which, in effect, is a sale of gas.

9. The Commission erred in holding that the Rayne Field lease sale arrangement should be rescinded.

10. The Commission erred in finding that a lease sale arrangement consummated prior to the inauguration by

the Commission of the area approach to regulation must be revised in some unspecified manner to conform to area price regulation.

11. The Commission erred in attempting to require the formulation of a different means for Texas Eastern's acquiring gas supplies.

12. The Commission erred in requiring Texas Eastern and the producers to enter into a new contract in substitution for the lease sale arrangement.

13. The Commission erred in holding that it will now be necessary for the producers to file an application for a certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act.

14. The Commission erred in requiring Texas Eastern to file a revised application for a certificate to put into

effect a new arrangement for the supply of gas to Texas Eastern from the Rayne Field.

15. The Commission erred in failing to find that the acquisition costs of the Rayne Field leases are consistent with the public convenience and necessity.

16. The Commission erred in failing to reissue the certificate of public convenience and necessity issued by its Opinion No. 322.

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Argument

The Commission's Opinion No. 378 is based upon hindsight rather than the evidence of record in this proceeding. The Commission has further erred in attempting to treat the Rayne Field lease acquisition as a proposal to purchase leases rather than a final, irrevocable sale completed more than three and one-half years ago. The Commission has also exceeded its authority in attempting to overrule the existing law of the land established by the Supreme Court's decision in *FPC* v. *Panhandle Eastern Pipe Line Company*, 337 U.S. 498, and the law of this case established by its prior Opinion No. 322, 21 FPC 860, and the decision of the United States Court of Appeals for the District of Columbia Circuit, *PSC* v. *FPC*, 287 F. 2d 143. In addition, the Commission committed error in reversing the findings of its former Opinion No. 322.

A. *The Commission erred in finding that the Rayne Field lease acquisition is not in the public interest.*

The uncontradicted evidence establishes that under the particular facts and circumstances existing at the time with respect to Texas Eastern's system, the purchase of the Rayne Field leases was a reasonable and prudent investment by Texas Eastern's management in the best interest

of its customers. For example, by acquiring the Rayne Field leases, Texas Eastern gained access to a very large gas supply ideally located on its system at a cost to the ultimate consumers in line with the cost of a large blocks of existing gas supplies then connected to its system and far less than the cost which would have been incurred in purchasing any then available comparable gas sup-

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plies. Moreover, by acquiring the leases, Texas Eastern avoided a disastrous favored nation triggering of existing gas purchase contracts which would have occurred if it had purchased the Rayne Field gas or any other then available gas supplies under conventional gas purchase contracts. At the same time the lease acquistion assisted Texas Eastern in avoiding take or pay problems which are now plaguing many other members of the industry.

The foregoing are but a few of the many advantages which the Commission and Texas Eastern's customers recognized when they announced their approval of the Rayne Field lease acquisition. It may be that in the light of the changed circumstances presently existing more than three and one-half years since the lease acquistion, the Commission and some of Texas Eastern's customers feel that it would not be in the public interest for Texas Eastern to now acquire the leases. We disagree. However, it is idle to speculate on whether the lease acquistion would be prudent today. The leases were irrevocably acquired by Texas Eastern long ago. The prudence of the investment and whether it was in the public interest must be judged solely on the basis of the facts in existence at the time of the acquisition. The law does not permit the Commission the privilege of hindsight. *Kerr* v. *South Park Commr's.*, 177 U.S. 379, and *International Paper Co.* v. *U. S.*, 227 F. 2d 201 (CA 5). The Commission's former Opinion No. 322 contains exhaustive findings in support of its conclusion

that the acquistion of the Rayne Field leases was in the public interest under then existing circumstances. It erred in reversing such opinion without the benefit of any substantial evidence to support the reversal.

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B. *The Commission cannot reexamine the jurisdictional question related to the Rayne Field lease acquisition.*

At the time Texas Eastern acquired the Rayne Field leases it was conceded by the Commission and all parties, including the New York Public Service Commission, that the lease sale was beyond the jurisdiction of the Commission.[1] In reliance upon the Commission's express findings in its Opinion No. 322 that it had no jurisdiction over the lease acquisition, Texas Eastern and the sellers irrevocably changed their positions by closing the transaction on July 27, 1959. The Commission's findings as to its lack of jurisdiction were subsequently affirmed by the Court of Appeals for the District of Columbia Circuit.

Under the foregoing circumstances, the Commission's belated decision to reexamine the jurisdictional question in its Opinion No. 378 does violence to all principles of law and equity. In reaching its decision to reexamine this issue, the Commission rationalizes that it "was hardly considered in the earlier phase of this proceeding," and "was given but passing mention by the Commission and the Court." (Op. p. 5). We respectfully submit that full consideration was given to the issue by both the Commission and the Court. However, we do not believe that adequacy of consideration can be made a criterion. The controlling fact is that the issue was considered and

[1] In its application for rehearing of Opinion No. 322 the New York Public Service Commission stated that "* * * the Commission correctly observed that 'Texas Eastern has not filed an application for a certificate authorizing the acquisition of the Rayne Field leases and we have no authority to issue such a certificate' * * *." (App. p. 3).

decided. Acting in good faith upon the decision, the parties changed their positions and would now suffer irreparable harm by a reversal of the decision.

The Commission also relies upon *NLRB* v. *Baltimore Transit Co.*, (CA 4) 140 F. 2d 51, and *FPC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, as authority for its reexamination of the jurisdictional question. Such cases are not germane. Each deals with the power of a regulatory agency upon remand to consider issues not considered or passed upon by the appellate court. In the instant case the Commission recognizes that the Court of Appeals considered and passed upon the jurisdictional question of the lease acquisition. (Op. pp. 5, 10). Its decision upon this issue thus became the law of the case, and its mandate expressly prohibits the Commission from reexamining and deciding the issue in a manner "inconsistent with the opinion." The Commission erred in ignoring these established legal principles.

C. *The Rayne Field lease acquisition was not subject to the jurisdiction of the Commission.*

If it is asumed, *arguendo*, that the Commission had the right to reexamine the jurisdictional question, the Commission nevertheless erred in finding that the sale of the Rayne Field leases was subject to its jurisdiction. This finding is based upon the reasoning that (1) the present case is distinguishable from that involved in *FPC* v. *Panhandle Eastern Pipe Line Company*, (2) the *Panhandle* case has been overruled, and (3) the lease sale is an attempt to disguise a transaction which, in effect, is a sale of gas. (Op. pp. 7, 8, 10).

The invalidity of each of the aforementioned reasons is shown

below:

(1) *The present case is not distinguishable from the Panhandle case.*

The Commission attempts to distinguish the *Panhandle* case upon the ground that "in that case the leases were undeveloped so that the transfer did not resemble a sale of gas as did the sale of developed leaseholds here." (Op. p. 7). Clearly, this is no distinction at all. In the *Panhandle* case the Supreme Court stated that the issue before it for decision was as follows:

> "Specifically the question to be decided is whether a natural-gas company, subject to the Act, may sell the leases covering an estimated twelve per cent of its total gas reserves without the approval and contrary to an order of the Commission." (337 U.S. 498, 499).

Obviously, the sale by Panhandle of "leases covering an estimated twelve per cent of its total gas reserves" resembled a sale of gas just as much as did the sale of the Rayne Field leases to Texas Eastern. The stage of development of the Panhandle leases is of no consequence to the determination of the issue of whether gas was sold. The controlling fact is that the reserves underlying the Panhandle leases were proven at the time of the sale. Yet, despite the fact that the leases were known to cover a defined block of gas, the Supreme Court held the sale to be beyond the jurisdiction of the Commission. By the same token the sale of the Rayne Field leases was also beyond the Commission's jurisdiction.

The Commission also attempts to distinguish the *Panhandle* case upon the contention that "the reserves here are connected or are to be connected to an interstate pipeline and are to be sold in interstate

commerce while those in *Panhandle* were transferred to a corporation which subsequently sold them in intrastate commerce." (Op. pp. 7, 8). That these facts cannot form the basis for a distinction will be apparent from the following observations by the Supreme Court in the *Panhandle* case:

> "It is pointed out that Panhandle in three applications for certificates of convenience and necessity to construct additional pipe-line facilities had included the acreage here involved as part of its gas reserves, and certificates were issued upon the finding by the Commission that Panhandle had adequate reserves to warrant its expansion. Moreover Panhandle had been permitted to include these reserves in its rate base as 'used and useful property.'" (337 U.S. 498, 507).

It should also be noted that in the *Panhandle* case, Panhandle Eastern Pipe Line Company reserved "the option to purchase on or after January 1, 1965, all or part of the gas produced * * *" from the leases transferred to Hugoton Production Company. (337 U.S. 498, 500). Thus, in the *Panhandle* case the leases had already been committed to interstate commerce at the time of the sale and the seller retained the right to connect the gas to its interstate pipeline system after the sale. Clearly, the Panhandle leases were more closely tied to interstate commerce at the time of the sale than were the Rayne Field leases.

Finally, the Commission rationalizes that "in the *Panhandle* case the gas reserves passed entirely out of the control of the seller while here the seller retained rights to oil, gas if found other than in particular strata, production payments for liquids, and management of the field." (Op. p. 8). We submit that this too is an invalid

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basis for distinguishing the *Panhandle* case. The uncontradicted testimony of Mr. John T. Guyton, a distinguished Louisiana attorney, establishes that the Assignment and Conveyance of the Rayne Field leases to Texas Eastern was valid under Louisiana law and that Texas Eastern succeeded to all rights of the sellers "with respect to all gas produced from all formations between the surface of the ground and the base of the Nodosaria 'A' sand, subject only to the payment of such royalties, overriding royalities and production payments as have been provided by the contract." (Ex. M-11, Tr. 1400). At the time of the conveyance no gas reserves had been discovered below the base of the Notosaria "A" sand. Thus in Rayne as in *Panhandle* the known gas reserves passed entirely out of the control of the sellers. The fact that the sellers of the Rayne Field leases retained rights unrelated to the known gas reserves is immaterial to the jurisdictional issue.

(2) *The Panhandle case has not been overruled.*

The Commission's speculation that perhaps the *Panhandle* case was overruled by the Supreme Court's later decision in *Phillips Petroleum Company* v. *Wisconsin*, 347 U.S. 672, completely overlooks the fact that in the *Phillips* case the Supreme Court cited and relied upon its decision in the *Panhandle* case (347 U.S. 672, 678). Surely, if the Court had intended to overrule the *Panhandle* case, it would have said so. Moreover, in the instant case, the Court of Appeals expressly cited and distinguished the *Phillips* and *Panhandle* cases (287 F. 2d 143, 145).

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The Commission's references to *Saturn Oil & Gas Co.* v. *FPC*, 250 F. 2d 61 (CA 10) and *Continental Oil Co.* v. *FPC*, 266 F. 2d 208 (CA 5) are irrelevant (Op. p. 8). Such

cases dealt with sales of gas under conventional contracts and have no bearing whatsoever upon the question of whether a sale of leases is jurisdictional. More apropos is the fact that in each of its Annual Reports to the Congress for the years 1950 through 1962, the Commission has advocated legislation which would grant it jurisdiction over transfers of leases and natural gas reserves and various unsuccessful bills have been introduced in the Congress to accomplish this Commission aim. This interpretation by the Commission of its lack of jurisdiction over lease transfers together with the acquiescence of the Congress in that interpretation is, of course, entitled to great weight. *Mississippi Valley Gas Co.* v. *FPC*, 294 F. 2d 588 (CA 5) and *Gas Service Co.* v. *FPC*, 282 F. 2d 496 (CADC). Clearly, therefore, the *Panhandle* case is still binding upon the Commission and must be followed by it.

(3) *The Rayne Field lease sale was a bona fide transfer of leases.*

The Commission's finding that the Rayne Field lease purchase constituted an attempt to disguise a transaction which, in effect, is a sale of gas (Op. pp. 6, 7, 10) completely ignores the evidence of record in this proceeding and the Commission's prior findings in its Opinion No. 322, 21 FPC 860. Mr. John T. Guyton's testimony conclusively establishes that under Louisiana law a lease sale

does not operate to convey title to the minerals, but only the exclusive right to explore for and produce the minerals. Thus, by no stretch of the imagination can the sale of leases in Louisiana be likened to a sale of gas. The opinion of Mr. Guyton's law firm in this connection is as follows:

> "In Louisiana, under a commercial oil, gas and mineral lease similar to those above referred to, the lessee (including his successors, assigns or sublessees)

has the exclusive right to go upon the leased premises, to explore for oil and gas by drilling, to develop the premises for the production of oil and gas, to produce such minerals, and upon production, to reduce such minerals to possession and ownership, and to market same, subject to the payment of such royalties as the lessor may have reserved and of such overriding royalties and production payments as the lease may be burdened with. The lease itself, immediately upon its execution, *does not convey title to the subsurface minerals to the lessee;* but it does convey the exclusive right to explore for and produce minerals, and, upon production, to reduce the minerals to possession and ownership and to market same. (See *McCoy* v. *United Gas Public Service Co.*, U.S.D.C., W. D. La., 57 F. Supp. 444; *Dixon* v. *American Liberty Oil Co.*, 226 La. 911, 77 So. 2d 533 (1954) and cases cited therein)." (Ex. M-11). (Emphasis supplied).

Mr. John Jacobs, Vice President in charge of Texas Eastern's Gas Supply and an attorney, also testified at length as to the many fundamental differences between a purchase of leases and a purchase of gas (Tr. pp. 1621-1659). Further, in summarizing some of the many differences between the Rayne Field lease acquisition and a conventional gas purchase contract, the Commission, in its brief before the Court of Appeals in this case, stated:

"Whatever the precise unit cost turns out to be, the form of the acquisition offers several distinct advantages to Texas Eastern, the consumers served by its system, and to segments of the public not directly involved herein (R. 1356-1358, 1622-1623, 1625-1626, 1632-

1636). Contracts to sell natural gas usually contain escalation provisions of one sort or another and thus

pose the prospect of increasing and uncertain gas prices over the life of the contract. The acquistion of leases, coupled with the provisions for deducting amounts covering the annual expenses of operating Rayne field from the production payment, assured Texas Eastern of a fixed cost. Contracts to sell gas today oblige the purchaser to take a minimum volume when offered or pay for it as if taken. Increasingly high minima cause an inflexibility in a pipeline company's gas supply which acquisition of leases avoids. *Being its own producer, Texas Eastern will be in a position to regulate its takes in terms of the seasonal and cyclical needs of its system.* (Cf. R. 1732, 1772). Moreover, while gas purchases could activate 'favored-nations' and other indeterminate pricing clauses in prior contracts, the purchase of leases cannot have such effect on either Texas Eastern's or other pipeline companies' outstanding contracts." (Br. pp 9, 10)

* * * *

"The Commission found nothing unusual about a pipeline company's owning and producing leaseholds for a portion of its gas supply; it found the form of the lease transfer not to be unique in the oil and gas business; and it found the entire transaction to have been conducted at arm's length (R. 3721, 21 FPC 867). The Commission noted, as further benefits to Texas Eastern's customers and the public, and the lease purchase transaction avoided future contractual escalations of field price; added flexibility to Texas Eastern's overall operations; and eliminated the chance of 'triggering' escalations under 'favored-nation' clauses of Texas Eastern and other pipeline gas purchase contracts. (R. 3720, 21 FPC 866-7).

"Finally, the Commission found that 'public convenience and necessity' required Texas Eastern's proposed construction and operation of facilities and sales of gas (R. 3723, 21 FPC 868)." (Br. p. 13).

Nothing has transpired since the issuance of the Commission's Opinion No. 322 which would operate to change or obliterate any of the aforementioned advantages and features which distinguish the Rayne Field lease sale from a sale of gas. The Commission erred in ignoring these distinguishing features and further erred in over-

ruling its prior Opinion No. 322 without the benefit of any evidence of record to support its action.

D. *The Commission has no authority to require the parties to rescind the Rayne Field lease acquisition and enter into some other type of unspecified arrangement.*

Even if it is assumed, *arguendo,* that the Rayne Field lease sale is subject to the jurisdiction of the Commission, it is crystal clear that the Commission has far exceeded the bounds of its authority under the Natural Gas Act in attempting to require Texas Eastern and the sellers of the Rayne Field leases to rescind the transaction and enter into some new, unspecified type of contract. (Op. p. 11).

The only predicate laid by the Commission for its drastic directive consists in its observations that "it is indeed difficult to envision how we could exercise our regulatory authority within the framework of such an arrangement" and "sales under the arrangements herein contemplated could not readily be adjusted to our determination of just and reasonable rates in an area rate proceeding and they would thus escape effective rate regulation." (Op. p. 9).

The Commission apparently overlooks the salient fact that the sellers of the Rayne Field leases are not here seeking a certificate to make a "contemplated" sale of gas which perhaps could be conditioned by requiring changes in a proposed contract. Instead, the sale of the Rayne Field leases was consummated on July 27, 1959. If the sale of the leases was subject to the jurisdiction of the Commission, which is denied, it became so at that time. Thus, if the Commission has the power to regulate, it can only

regulate that which is in existence. It cannot order the parties to retroactively create a jurisdictional sale more amenable to its regulatory policies.

In *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.* (350 U.S. 332, 341), the Supreme Court made it quite clear that the Commission has neither a "rate making" nor a "rate changing" power. Quite the contrary, the Court specifically pointed out that the Natural Gas Act preserves "the integrity of contracts" (350 U.S. at 244). The Court further admonished that the Natural Gas Act should be construed as follows:

> "In construing the Act, we should bear in mind that it evinces no purpose to abrogate private rate contracts as such. To the contrary, by requiring contracts to be filed with the Commission, the Act expressly recognizes that rates to particular customers may be set by individual contracts." (350 U.S. at 338).

The fact that the Rayne Field lease sale might not fit in with the area rate regulatory philosophy adopted by the Commisison subsequent to the sale does not authorize the Commission to exceed its jurisdiction under the Natural Gas Act. The *Mobile* case makes it quite clear that the Commission erred in requiring that the Rayne Field lease

sale be abrogated and in ordering Texas Eastern and the sellers to enter into a new arrangement for the sale of the gas.

E. *The Commission erred in failing to find that the acquisition cost of the Rayne Field leases was consistent with the public convenience and necessity and further erred in failing to reissue the certificate issued by its Opinion No. 322.*

For the reasons heretofore set forth in Texas Eastern's briefs and in its exceptions to the examiner's decision issued June 29, 1962, it has been conclusively established that the acquisition cost of the Rayne Field leases was consistent with the public convenience and necessity and the certificate issued by the Commission's Opinion No. 322 should, therefore, be reissued in its entirety. We shall not further belabor the points in our briefs and exceptions. However, we earnestly request the Commission to again review them in its consideration of this Application for Rehearing.

Conclusion

For the foregoing reasons, Texas Eastern respectfully prays:

(1) That a rehearing be granted with reference to the Commission Opinion No. 378 and order issued herein on February 6, 1963;

(2) That on said rehearing the Commission withdraw said Opinion No. 378 and order issued February 6, 1963, and issue a new opinion and order finding that the acquisition cost of the Rayne Field is consistent with the public convenience and necessity and reissuing to Texas Eastern the certifiate of public convenience and necessity heretofore issued by the Com-

mission's Opinion No. 322 and order of June 23, 1959, in these proceedings; and

(3) That Texas Eastern have such other and further re-

lief that may appear to the Commission to be just and proper.

Respectfully submitted,

JACK D. HEAD
Jack D. Head
Vice President and General Counsel
Texas Eastern Transmission Corporation
P. O. Box 2521
Houston 1, Texas

Of Counsel:
W. D. DEAKINS, JR., *Esquire*
Vinson, Elkins, Weems & Searls
First City National Bank Building
Houston 2, Texas

KEITH M. PYBURN, *Esquire*
Texas Eastern Transmission Corporation
Suite 852, Pennsylvania Building
Washington 4, D. C.

JOSEPH F. WEILER, *Esquire*
Texas Eastern Transmission Corporation
P. O. Box 2521
Houston 1, Texas

MARTIN L. FRIEDMAN, *Esquire*
Chapman and Friedman
932 Pennsylvania Building
Washington 4, D. C.

Dated: March 6, 1963.

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VERIFICATION

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE Me, the undersigned authority, on this day personally appeared Jack D. Head, who, being by me first duly sworn, on oath deposes and says:

That he is Vice President and General Counsel for Texas Eastern Transmission Corporation in the foregoing Application for Rehearing of Opinion No. 378 and Order Issued February 6, 1963; that as such, he is authorized to verify and file the same with the Federal Power Commission; that he has read said Application and is familiar with the contents thereof; and that all averments of fact therein contained are true to the best of his knowledge, information and belief.

JACK D. HEAD
Jack D. Head

SWORN TO AND SUBSCRIBED before me on this 6th day of March, 1963

(SEAL)

FLORRIS H. PLOWMAN
Florris H. Plowman

Notary Public in and for
Harris County, Texas

My Commission Expires June 1, 1963

4555

[Docket Apr. 2, 1963]

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Joseph C. Swidler, Chairman; L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

	Docket Nos.
Texas Eastern Transmission Corporation	G-12446, G-12447
Continental Oil Company	G-12432

Order Granting Applications for Rehearing

(Issued April 2, 1963)

Applications for rehearing have been filed by Texas Eastern Transmission Corporation, Continental Oil Company, Sun Oil Company, General Crude Oil Company, and M. H. Marr with respect to our Opinion No. 378 and Order issued February 6, 1963. In our opinion we found that the arrangement by which the producers conveyed leasehold interests in the Rayne Field to Texas Eastern was in reality a sale for resale in interstate commerce subject to our jurisdiction, and we therefore deferred decision on Texas Eastern's application for a certificate until the company and the producers should enter into a new arrangement and make appropriate filings.

Continental argues that our order of July 14, 1961, 26 FPC 167, gave it no notice that jurisdiction was to be considered in the remanded proceedings, that it was only a nominal party and did not participate in the remanded proceedings, and that it was surprised and denied due process with respect to the jurisdictional issue. It also contends that Sun, Marr and General Crude were also denied due

process and were improperly ordered to make filings although they were not parties. Marr likewise objects to lack of notice or opportunity for a hearing and also contends that it has been denied due process of law.[1]

We think there is no merit to the contentions that the jurisdictional question was not in issue in the remanded proceedings, and certainly Continental as a party thereto was or should have been aware that its role of being only "nominally a party" in the case was being seriously challenged by the staff. The other three producers probably also had

actual knowledge that the status of their sale to Texas Eastern was being raised before the Commission. While we doubt that any of the producers were deprived of due process, this is a matter of first impression and the Commission, having previously permitted Sun, Marr and General Crude to withdraw their applications to make jurisdictional sales to Texas Eastern, has taken no express action to insure that they were made parties to the reopened proceedings. In the special circumstances of this case we believe we should take extra precautions to assure that the producers have had a full opportunity to present their case.

As indicated by the applications for rehearing, our opinion and order made Sun, Marr and General Crude parties to these proceedings and we shall treat them as such. All four of the producers have argued at length the jurisdictional question raised by the record in this proceeding on legal grounds in their applications for rehearing and nothing in their petitions persuades us that on the basis of the facts presently before us we should reconsider Opinion No. 378. Indeed the subsequent decision of the

[1] Sun and General Crude do not request rehearing on the ground that they were not parties or did not receive appropriate notice that the jurisdictional question was in issue.

Supreme Court in *Northern Natural Gas Co.* v. *State Corporation Commission of Kansas*, U.S. , No. 62, February 18, 1963, emphasizes the broad nature of our exclusive jurisdiction. However, Continental and Marr indicate that they desire a hearing to supplement the record even though they have not indicated in what respect the record is incomplete. Before making further disposition of these proceedings we shall therefore grant rehearing to afford the four producers an opportunity to show whether a proper resolution of this matter requires a further evidentiary hearing. To this effect we shall require that they file within 30 days of this order a further pleading setting forth the nature of the evidence they propose to submit and what they intend to prove by such evidence at any further hearing in this proceeding so that we may determine whether any further evidentiary hearing is necessary. Such evidence should be confined to whether we have jurisdiction over the transaction between the producers and Texas Eastern presently before the Commission, whether the present lease sale type of arrangement is in the public interest and whether it may be rescinded. Evidence from the producers on price or rate levels for this sale, assuming it is to be jurisdictional, is not appropriate at this stage of the proceedings, nor is evidence of other arrangements which might be made between the parties in accordance with our Opinion No. 378.

If it appears that significant new evidence relevant to the issues referred to above will be introduced, we shall set the case for further hearing and simultaneously specify the procedure for further action in the case. Since Texas Eastern's application for a certificate is closely connected with the resolution of the jurisdictional question, we shall also grant its application for rehearing subject to the provisions of this order.

The Commission further finds:

It is in the public interest that the applications for rehearing filed by Texas Eastern, Continental, Sun, Marr, and General Crude be granted subject to the procedures discussed above and set forth in paragraph (B) below.

The Commission orders:

(A) The applications for rehearing filed by Texas Eastern, Continental, Sun, Marr and General Crude are hereby granted subject to the procedures discussed above and set forth in paragraph (B) below.

(B) If Continental, Sun, Marr or General Crude desire a further evidentiary hearing, they shall notify the Commision within 30 days of the issuance of this order setting forth specifically the nature of the evidence which they propose to introduce, and what they intend to prove thereby. The evidence shall be confined to the following issues: (1) Whether the Commission has jurisdiction over the sale of leases to Texas Eastern, (2) whether the lease sale type of arrangement between the producers and Texas Eastern is in the public interest, and (3) whether the lease-sale arrangement may be rescinded and another arrangement substituted. The evidence shall not include cost data or other data in support of a particular price or rate level, or evidence of other arrangements between the parties.

By the Commission. Commissioner Woodward not participating.

J. H. GUTRIDE
Joseph H. Gutride,
Secretary.

(SEAL)

4558

Docketed April 15, 1963

BEFORE THE FEDERAL POWER COMMISSION

In the Matters of

	Docket Nos.
TEXAS EASTERN TRANSMISSION CORPORATION	G-12446, G-12447
and	
CONTINENTAL OIL COMPANY	G-12432

Application for Rehearing of M. H. Marr

Comes now M. H. Marr (Marr), pursuant to Section 19(a) of the Natural Gas Act and Section 1.34 of the Rules of Practice and Procedure, and hereby applies for rehearing of the Commission's order entered in the above-entitled proceedings on April 2, 1963. In support of this application Marr shows as follows:

I.

Although such order of April 2, 1963 is entitled "Order Granting Applications for Rehearing" the practical effect of such order is a denial of Marr's application for rehearing filed herein on March 7, 1963 and directed to the Commission's Opinion No. 378 and accompanying order of February 6, 1963.

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The April 2, 1963 order is no more than a reiteration and further perpetuation of the fundamental error committed in the February 6, 1963 decision, that is, to expand the scope of the remanded proceedings following the decision of the Court of Appeals for the District of Columbia

Circuit in *Public Service Commission* v. *Federal Power Commission*, 287 F. 2d 143, far beyond the limitations of that Court's mandate.

As made abundantly clear in Marr's earlier application for rehearing (pp. 7-9, 20-21), the question of whether the Commission has jurisdiction over the Rayne Field lease sale transaction was decided by the Commission in its first decision in this proceeding (21 F.P.C. 860). The Commission's conclusion there that it did not have jurisdiction over the lease transaction was upheld by the Court of Appeals. The issue was thus closed. The decision on this issue became the law of the case and was binding thereafter upon the Commission, *National Labor Relations Board* v. *Brown & Root, Inc.*, (C.A.D.C. 1953), 204 F. 2d 139, 146.

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II.

By the April 2, 1963 order purporting to grant rehearing the Commission appears to be attempting to circumvent its procedural errors committed earlier by specifically stating the question of jurisdiction to be an issue in this case. But the Commission cannot utilize such "boot-strap" procedures to justify reexamination and further exploration into an issue which it previously decided and which decision was judicially affirmed.

Such order would apparently afford Marr an opportunity to present evidence directed to the question of whether the Commission has jurisdiction over the lease sale transaction. In other words, Marr would be permitted to submit evidence designed to persuade the Commission that it does not have jurisdiction over the lease sale.

Despite the fact that it is abundantly clear that the Commission has a closed mind on this subject, the procedure

prescribed is erroneous, unjustified and illegal first, because the question is no longer open for consideration and, in any event, such procedure represents an effort by the Commission to shift the burden of proof. The question

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of jurisdiction is one which the Commission must show affirmatively and cannot be assumed in the absence of a negative showing by the person against whom jurisdiction is asserted. Marr cannot be required to prove by an evidentiary showing that the Commission does not have jurisdiction over the lease sale transaction.

III.

With respect to the other two issues framed by the Commission, namely, "whether the lease-sale type of arrangement between the producers and Texas Eastern is in the public interest" and "whether the lease-sale arrangement may be rescinded and another arrangement substituted," Marr stands upon the contentions made in his application for rehearing filed in these proceedings on March 7, 1963 which application is incorporated herein and made a part hereof by reference. Once it is recognized that the Commission has no jurisdiction over the lease sale transaction there is no need for further inquiry into other collateral matters.

It is perfectly obvious that the form of the "rehearing" purportedly granted by the Commission's order of April 2, 1963 is in no manner the type of relief sought by Marr and Marr has nothing to gain by submitting a notice as contemplated by Paragraph (B) of such order and no such notice will be submitted.

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WHEREFORE, Marr requests that the Commission rescind its order of April 2, 1963 and find and determine that it

has no jurisdiction over the Rayne Field lease sale transaction. It is further requested that a stay of the Commission's Opinion No. 378 and accompanying order of February 6, 1963 be granted for the reasons heretofore stated in Marr's application for rehearing filed in this proceeding on March 7, 1963.

Respectfully submitted,

M. H. MARR

By DONLEY C. WERTZ
Donley C. Wertz
His Attorney

DONLEY C. WERTZ
2500 Republic National
Bank Building
Dallas, Texas

MAY, SHANNON AND MORLEY
1700 K Street, N. W.
Washington 6, D. C.

Attorneys for M. H. Marr

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DISTRICT OF COLUMBIA ss:

Donley C. Wertz, being first duly sworn, deposes and says that he is Attorney for M. H. Marr; that as such he has signed the foregoing "Application for Rehearing of M. H. Marr" for and on behalf of M. H. Marr; that he is authorized so to do; that he has read said Application and is familiar with the contents thereof; and that the matters

and things therein set forth are true and correct to the best of his knowledge, information and belief.

DONLEY C. WERTZ
Donley C. Wertz

Subscribed and sworn to before me, a Notary Public, this 15th day of April, 1963.

THOMAS C. EVANS
(SEAL) Thomas C. Evans
Notary Public

My Commission expires September 14, 1965.

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CERTIFICATE OF SERVICE

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Docketed April 17, 1963

BEFORE THE FEDERAL POWER COMMISSION

In the Matters of

	Docket Nos.
TEXAS EASTERN TRANSMISSION CORPORATION	G-12446, G-12447
CONTINENTAL OIL COMPANY	G-12432

Application for Rehearing and Stay by Sun Oil Company

Comes now Sun Oil Company (Sun) and, pursuant to the provisions of Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules of Practice and Procedure, being aggrieved, hereby applies for rehearing and stay of the Commission's order in the above-entitled proceedings, issued on April 2, 1963. In support of this application for rehearing, Sun states as follows:

I.

As the Commission's order issued April 2, 1963 recognizes, Sun did not, in its application for rehearing and stay of the Commission's Opinion No. 378 and accompanying order, request an "evidentiary hearing" in this case, nor is such a request an "evidentiary hearing" in this case, nor is such a request made at this time. Therefore, this application for rehearing and stay may be considered as notification by Sun, pursuant to Ordering Paragraph (B) of the order

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issued April 2, 1963, to the extent such paragraph may be lawful, that Sun does not desire an "evidentiary hearing" as described in and under the limitations imposed by the Commission's order, which are obviously not within the Commission's authority under the Act. Sun hereby reserves all of its rights accorded under the Natural Gas Act, the Administrative Procedure Act and the Fifth Amendment to the Constitution of the United States to participate fully at any and all lawful hearings which the Commission might hold involving this transaction.

II.

The order issued April 2, 1963 is misleadingly entitled "Order Granting Applications for Rehearing." Contrary to its caption, the order denies Sun's Application for Rehearing and Stay of Opinion No. 378 and accompanying order by specific language, as follows:

> "As indicated by the applications for rehearing, our opinion and order made Sun, Marr and General Crude parties to these proceedings and we shall treat them as such. All four of the producers have argued at length the jurisdictional question raised by the record in this proceeding on legal grounds in their applications for

rehearing and nothing in their petitions persuades us that on the basis of the facts presently before us we should reconsider Opinion No. 378. • • •"

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Thus, the Commission has reiterated its assertion of jurisdiction over Sun's assignment and conveyance of leases involved in this case. For all the reasons set forth in Sun's Application for Rehearing and Stay of Opinion No. 378 and its accompanying order, which is incorporated herein by reference, such assertion of jurisdiction is unlawful because it is beyond the Commission's statutory authority. Sun denies that the Commission has any such jurisdiction.

III.

The Commission, in its order issued April 2, 1963, purportedly provides only the possibility but not the certainty of an "evidentiary hearing" upon notification within 30 days by Sun and others that such an "evidentiary hearing" is desired and thereafter upon the exercise of the Commission's unfettered discretion whether such a hearing will actually be held. The Ordering Paragraphs read as follows:

"(A) The applications for rehearing filed by Texas Eastern, Continental, Sun, Marr and General Crude are hereby granted subject to the procedures discussed above and set forth in paragraph (B) below.

"(B) If Continental, Sun, Marr or General Crude desire a further evidentiary hearing, they shall notify the Commission within 30 days of the issuance of this order setting forth specifically the nature of the evidence which they propose to introduce, and what they intend to prove thereby. The evidence shall be confined to the following issues. (1) Whether the

Commission has jurisdiction over the sale of leases to Texas Eastern, (2) whether the lease sale type of arrangement between the producers and Texas Eastern is in the public interest, and (3) whether the lease-sale arrangement may be rescinded and another arrangement substituted. The evidence shall not include cost data or other data in support of a particular price or rate level, or evidence of other arrangements between the parties."

In the body of its order, the Commission states that:

"* * * Before making further disposition of these proceedings we shall therefore grant rehearing to afford the four producers an opportunity to show whether a proper resolution of this matter requires a further evidentiary hearing. To this effect we shall require that they file within 30 days of this order a further pleading setting forth the nature of the evidence they propose to submit and what they intend to prove by such evidence at any further hearing in this proceeding so that we may determine whether any further evidentiary hearing is necessary. Such evidence should be confined to whether we have jurisdiction over the transaction between the producers and Texas Eastern presently before the Commission, whether the present lease sale type of arrangement is in the public interest and whether it may be rescinded. * * *"

"If it appears that significant new evidence relevant to the issues referred to above will be introduced, we shall set the case for further hearing and simultaneously specify the procedure for further action in the case. * * *"

It is apparent, from the very language used in Orderin
Paragraph (A), that the action of the Commission wa
expressly made "subject to the procedure discussed abov
and set forth in paragraph (B) below." Thus, it is ev
dent,

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from both the ordering paragraphs and the statements
the body of the order that the Commission did not in fa
grant rehearing, nor did it provide for any hearing
these cases, but merely offered the possibility of a r
hearing or hearing subject to the Commission's discretio
in the future and to conditions which the Commissio
could not lawfully impose.

IV.

It is apparent from the Commission's delineation of t
"issues" as set forth in Paragraph (B) of the order
April 2, 1963, coupled with its reassertion of jurisdictio
in language which we have quoted above, that the "ev
dentiary hearing" which it states it may afford Sun a
others is designed merely to go through the formaliti
on issues which the Commission has already determine

The Commission has in fact made additional unsu
ported findings of fact and conclusions of law as follows

(1) The Commission has jurisdiction over the sale
leases to Texas Eastern unless Sun and others can ma
a showing that "significant new evidence" exists whi
would establish the contrary.

(2) The lease sale type of arrangement between "t
producers and Texas Eastern" is not in the public inter

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unless Sun and others can make a showing that "sign
cant new evidence" exists which would establish the c
trary.

(3) The "lease-sale arrangement may be rescinded and another arrangement substituted" unless Sun and others can make a showing that "significant new evidence" exists which would establish the contrary.

Thus, after unlawfully asserting twice, in Opinion No. 378 and accompanying order, and in the instant order issued April 2, 1963, that it has jurisdiction, the Commission defines the first "issue" upon which it may receive evidence to be "(1) Whether the Commission has jurisdiction over the sale of leases to Texas Eastern."

The further "issues" upon which the Commission states that it may receive evidence, namely, "(2) whether the lease-sale type of arrangement between the producers and Texas Eastern is in the public interest, and (3) whether the lease-sale arrangement may be rescinded and another arrangement substituted" not only involve the same element of predetermination set forth above with respect to issue (1), but also obviously require Sun to accept Commission jurisdiction which Sun is unwilling to accept in this case, where the Commission has so patently exceeded its authority under the Natural Gas Act.

Moreover, by providing for a possible "evidentiary hearing" and defining certain "issues" upon which it may receive evidence from Sun and other producers, the Commission has attempted to place upon them and to shift to them a burden of proof which is not authorized by the Natural Gas Act.

WHEREFORE, for all of the foregoing reasons, Sun requests the Commission to grant this application for rehearing of its order issued April 2, 1963, and upon such rehearing to reverse and set it aside, together with Opinion No. 378 and accompanying order upon which the order of

April 2, 1963 is based and to grant a stay of said orders pending judicial review thereof.

Respectfully submitted,

SUN OIL COMPANY

By ROBERT E. MAY
Robert E. May
Its Attorney

JOHN A. WARD, III
PHILLIP D. ENDOM
1608 Walnut Street
Philadelphia 3, Pennsylvania

JOINER CARTWRIGHT
HERF M. WEINERT
P. O. Box 2831
Beaumont, Texas

ROBERT E. MAY
May, Shannon and Morley
1700 K Street, N. W.
Washington 6, D. C.

Attorneys for Sun Oil Company

MARTIN A. ROW
P. O. Box 2880
Dallas, Texas

Of Counsel

DISTRICT OF COLUMBIA, ss:

Robert E. May, being first duly sworn, deposes and says that he is attorney for Sun Oil Company; that as such he has signed the foregoing "Application For Rehearing And Stay By Sun Oil Company" for and on behalf of said Company; that he is authorized so to do; that he has read

said Application and is familiar with the contents thereof; and that the matters and things therein set forth are true and correct to the best of his knowledge, information and belief.

ROBERT E. MAY
Robert E. May

Subscribed and sworn to before me, a Notary Public, this 17th day of April, 1963.

THOMAS C. EVANS
Thomas C. Evans
(SEAL) *Notary Public*

My Commission expires September 14, 1965.

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CERTIFICATE OF SERVICE

* * * * * * * * * *

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(Docketed April 22, 1963)

BEFORE THE FEDERAL POWER COMMISSION
UNITED STATES OF AMERICA

Docket Nos. G-12446, G-12447 and G-12432

In the Matters of

TEXAS EASTERN TRANSMISSION CORPORATION
CONTINENTAL OIL COMPANY

Application for Rehearing by General Crude Oil Company

* * * * * * * * * *

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Comes now General Crude Oil Company (General Crude) and, pursuant to the provisions of Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's

Rules of Practice and Procedure, being aggrieved, and hereby applies for rehearing of the Commission's order in the above-entitled proceedings, issued on April 2, 1963. In support of this application for rehearing, General Crude states as follows:

I.

The order issued April 2, 1963 is misleadingly entitled "Order Granting Applications for Rehearing". Contrary to its caption, the order denies General Crude's Application for Rehearing and Stay of Opinion No. 378 and accompanying order by specific language, as follows:

> "As indicated by the applications for rehearing our opinion and order made Sun, Marr and General Crude parties to these proceedings and we shall treat them as such. All four of the producers have argued at length the jurisdictional question raised by the record in this proceeding on the legal grounds in their applications for rehearing and nothing in their petitions persuades us that on the basis of the facts presently before us we should reconsider Opinion No. 378. * * *"

Thus, the Commission has reiterated its assertion of jurisdiction over General Crude's assignment and conveyance of leases involved in this case. For all the reasons set forth in General Crude's application for rehearing and stay of Opinion 378 and its accompanying order, which is incorporated herein by reference, such assertion of jurisdiction is unlawful because it is beyond the Commission's statutory authority.

II.

The question of whether the Commission has jurisdiction over the Rayne Field lease sale transaction was de-

cided by the Commission in its first decision in this proceeding (21 F.P.C. 860). The Commission's conclusion there that it did not have jurisdiction over the lease transaction was upheld by the Court of Appeals

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(287 F. 2d 143) and the lack of this Commission's jurisdiction over this transaction was forever foreclosed by that Court's mandate. The decision on this issue became the law of the case and was binding thereafter upon the Commission, *National Labor Relations Board* v. *Brown & Root, Inc.*, (C.A.D.C. 1953), 204 F. 2d 139, 146.

III.

As the Commission's order issued April 2, 1963 recognizes, General Crude did not, in its application for rehearing and stay of the Commission's Opinion No. 378 and accompanying order, request an "evidentiary hearing" in this case, nor is such a request made at this time. Insofar as the Commission's order mentions such an "evidentiary hearing" the order purports to impose an entirely new requirement upon General Crude and the order is therefore subject to this application for rehearing under Section 19(b) of the Natural Gas Act.

IV.

The Commission, in its order issued April 2, 1963, purportedly provides only the possibility but not

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the certainty of an "evidentiary hearing" upon notification within 30 days by General Crude and others that such an "evidentiary hearing" is desired and thereafter upon the exercise of the Commission's unfettered discretion whether such a hearing will actually be held. The Ordering Paragraphs read as follows:

"(A) The applications for rehearing filed by Texas Eastern, Continental, Sun, Marr and General Crude are hereby granted subject to the procedures discussed above and set forth in paragraph (B) below.

"(B) If Continental, Sun, Marr or General Crude desires a further evidentiary hearing, they shall notify the Commission within 30 days of the issuance of this order setting forth specifically the nature of the evidence which they propose to introduce, and what they intend to prove thereby. The evidence shall be confined to the following issues: (1) Whether the Commission has jurisdiction over the sale of leases to Texas Eastern, (2) whether the lease sale type of arrangement between the producers and Texas Eastern is in the public interest, and (3) whether the lease-sale arrangement may be rescinded and another arrangement substituted. The evidence shall not include cost data or other data in support of a particular price or rate level, or evidence of other arrangements between the parties."

In the body of its order, the Commission states that:

"* * * Before making further disposition of these proceedings we shall therefore grant

rehearing to afford the four producers an opportunity to show whether a proper resolution of this matter requires a further evidentiary hearing. To this effect we shall require that they file within 30 days of this order a further pleading setting forth the nature of the evidence they propose to submit and what they intend to prove by such evidence at any further hearing in this proceeding so that we may determine whether any further evidentiary hearing is necessary.

Such evidence should be confined to whether we have jurisdiction over the transaction between the producers and Texas Eastern presently before the Commission, whether the present lease sale type of arrangement is in the public interest and whether it may be rescinded."

"If it appears that significant new evidence relevant to the issues referred to above will be introduced, we shall set the case for further hearing and simultaneously specify the procedure for further action in the case. * * *"

It is apparent, from the very language used in Ordering Paragraph (A), that the action of the Commission was expressly made "subject to the procedure discussed above and set forth in Paragraph (B) below." Thus, it is evident, from both the ordering paragraphs and the statements in the body of the order that the Commission did not in fact grant rehearing, nor did it provide for any hearing in these cases, but merely offered the possibility of a rehearing or hearing subject to the Commission's discretion in the future and to conditions which the Commission could not lawfully impose.

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V.

It is apparent from the Commission's delineation of the "issues" as set forth in Paragraph (B) of the order of April 2, 1963, coupled with its reassertion of jurisdiction, in language which we have quoted above, that the "evidentiary hearing" which it states it may afford General Crude and others is but a hollow mockery and is designed merely to go through the formalities on issues which the Commission has already predetermined.

Thus, after unlawfully determining twice, in Opinion No. 378 and accompanying order, and in the instant order issued April 2, 1963, that it has jurisdiction, the Commission defines the first "issue" upon which it may receive evidence to be "(1) Whether the Commission has jurisdiction over the sale of leases to Texas Eastern." And this "issue" has been settled in the same order in which the Commission has reasserted its alleged jurisdiction.

The further "issues" upon which the Commission states that it may receive evidence, namely, "(2) whether the lease-sale type of arrangement between the producers and Texas Eastern is in the public interest, and (3) whether

the lease-sale arrangement may be rescinded and another arrangement substituted" not only involve the same element of predetermination set forth above with respect to issue (1), but also obviously require General Crude to accept Commission jurisdiction which General Crude is unwilling to accept in a case where the Commission has so patently exceeded its authority under the Natural Gas Act.

Moreover, by providing for a possible "evidentiary hearing" and defining certain "issues" upon which it may receive evidence from General Crude and other producers, the Commission has attempted to place upon them and to shift to them a burden of proof which is not authorized by the Natural Gas Act. General Crude is not an applicant for a certificate of public convenience and necessity in this case, because no such certificate is here required, and it has no burden for the presentation of evidence or in any other manner.

VI.

This application for rehearing may be considered as notification by General Crude that no notice as contem-

plated by Paragraph (B) will be submitted by General Crude and as notification by General Crude, pursuant to Ordering

Paragraph (B), that it does not desire an "evidentiary hearing" as described in and under the limitations imposed by the Commission's order, which are obviously not within the Commission's authority under the Act. The only certificate proceeding where General Crude would have any type of burden to offer evidence would be at such time, if ever, when General Crude applied for a certificate and its legal right then would be to offer such evidence as it believed established public convenience and necessity. General Crude also hereby reserves its right to offer evidence at any and all lawful hearings which the Commission might hold involving this transaction.

WHEREFORE, for all of the foregoing reasons, General Crude requests the Commission to grant this application for rehearing of its order issued April 2, 1963, and upon such rehearing to reverse and set it aside, together with Opinion No. 378 and accompanying order upon which the order of April 2, 1963 is based.

Respectfuily submitted,

By W. McIVER STREETMAN
W. McIver Streetman

LEON M. PAYNE, *Esq.*
W. McIVER STREETMAN, *Esq.*
Andrews, Kurth, Campbell & Jones
25th Floor Humble Building
Houston 2, Texas
Attorneys for General Crude Oil Company

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THE STATE OF TEXAS
COUNTY OF HARRIS

W. McIver Streetman, being first duly sworn, deposes and says that he is attorney for General Crude Oil Company; that as such he has signed the foregoing "Application for Rehearing by General Crude Oil Company" for and on behalf of said Company; that he is authorized so to do; that he has read said Application and is familiar with the contents thereof; and that the matters and things therein set forth are true and correct to the best of his knowledge, information and belief.

W. McIVER STREETMAN
W. McIver Streetman

Subscribed and sworn to before me, a Notary Public, this 19th day of April, 1963.

FEROL ROGERS
Ferol Rogers
Notary Public in and for
Harris County, Texas.

(SEAL)

My Commission expires June 1, 1963

4590-4594

CERTIFICATE OF SERVICE

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(Docketed April 30, 1963)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

	Docket Nos.
TEXAS EASTERN TRANSMISSION CORPORATION	G-12446, G-12447
CONTINENTAL OIL COMPANY	G-12432

Application of Continental Oil Company for Rehearing

* * * * * * * * * *

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* * * * * * * * * *

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Comes now Continental Oil Company ("Continental"), and pursuant to Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules of Practice and Procedure, hereby applies for a rehearing of the Commission's "Order Granting Applications for Rehearing" issued herein on April 2, 1963. In support of this application, Continental states as follows:

I.

THE ORDER OF APRIL 2, 1963, REPEATS AND PERPETUATES THE COMMISSION'S BASIC ERRORS FOUND IN ITS OPINION NO. 378 AND ORDER OF FEBRUARY 6, 1963

The Commission's Order of April 2, 1963, like its Opinion No. 378 and accompanying Order of February 6, 1963, repeats and perpetuates the following errors:

—It again ignores the property and mineral laws of the State of Louisiana;

— It again goes counter to the IRS ruling of January 13, 1959, in violation of the rule of res judicata;

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— It adheres to the reversal of Presiding Examiner Frazee's correct Decision of June 29, 1962, on the jurisdictional question;

— It once more repudiates the Commission's own Brief of July 11, 1960, filed in the Court of Appeals;

— It again attempts to overrule the Court of Appeals' Opinion of December 8, 1960, to disobey that appellate court's remand, and to redetermine issues which have been precluded from being reconsidered by the established law of this case;

— It again presumes to overrule the U. S. Supreme Court's 1949 decision in the *Panhandle* case;

— It again proposes to rewrite the Natural Gas Act of 1938 without Congressional sanction;

— It again assumes authority which no court (let alone an administrative agency) possesses, to compel parties to rescind a lawful, binding, and consummated transaction; and

— It again assumes power to direct the parties to agree upon and enter into completely new and different contractual relationships, which direction is impossible to comply with, is a legal nullity, and is beyond the authority of this

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Commission or of any other administrative or judicial body.

These basic errors were pointed out and discussed at length in Continental's Application for Rehearing filed on March 7, 1963, and addressed to Opinion No. 378 and the accompanying Order issued on February 6, 1963. That earlier Application is hereby incorporated by reference with the same force and effect as though repeated verbatim in this Application.

II.

Errors in the Order of April 2, 1963, With Respect to the "Jurisdictional Question"

Despite Continental's painstaking exposition and elucidation of the pertinent facts and law in its earlier Application for Rehearing, the Commission's Order of April 2, 1963, states that:

> "All four of the *producers* have argued at length *the jurisdictional question raised by the record in this proceeding* on legal grounds in their applications for rehearing and *nothing in their petitions persuades us that on the basis of the facts presently before us we should reconsider Opinion No. 378* . . . we shall therefore grant rehearing to afford the four *producers* an opportunity to show whether a proper resolution of this matter requires a further evidentiary hearing. To this effect, we shall require that they file . . . a further pleading setting forth the nature of the evidence they propose to submit and what they intend to prove by such evidence . . . Such evidence shall be confined to *whether we have jurisdiction over the transaction between the producers and Texas Eastern presently before the Commission* . . . ." (Emphasis added.)

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The Order of April 2, 1963, later directs that:

> "(B). If Continental, Sun, Marr and General Crude desire a further evidentiary hearing, they shall notify the Commission . . . . setting forth specifically the nature of the evidence which they propose to introduce, and what they intend to prove thereby. The evidence shall be confined to the following issues: (1) *Whether the Commission has jurisdiction over the sale of leases to Texas Eastern . . .*" (Emphasis added.)

The errors committed by the Commission in the above-quoted and related portions of its Order of April 2, 1963, are as follows:

1. The Commission knew full well that all of the evidence upon which Continental relies pertaining to the "jurisdictional question" is already a part of the record in this case, or can be made so by reference or judicial notice, because such evidence was cited, quoted, and discussed in detail in Continental's earlier Petition for Rehearing. Therefore, the proffered "opportunity" of "a further evidentiary hearing" on the "jurisdictional question" is, on its face, a mere pretense and a sham.

2. The record in this case shows beyond the slightest doubt that Continental et al. sold leasehold interests in real estate and not a single cubic foot of "natural gas." Accordingly, under the property and mineral laws of Louisiana, under the Natural Gas Act as written by Congress, under the Supreme Court's decision in *Panhandle*, and under the established law of this very case, no issue

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is or can be raised herein as to whether the Commission possesses jurisdiction over the assignors of the Rayne

Field leases. Since Continental et al. did not sell any gas, but sold only interests in "real rights and incorporeal immovable property," the "jurisdictional question" or "jurisdictional issue" has vanished from this case. So held the Commission itself on June 23, 1959, in its Opinion No. 322; so explained the Commission over and over again in its Brief of July 11, 1960, to the Court of Appeals; and so held the Court of Appeals flatly and conclusively in its adjudication of December 8, 1960. The Commission erred, therefore, in referring in its Order of April 2, 1963, to "the jurisdictional question *raised by the record in this proceeding.*" That record raises no such question; on the contrary, that record negatives the existence of any such "issue." By the same token, the Order of April 2, 1963, is in error in stating that there is "presently before the Commission" an "issue" as to "whether we [FPC] have jurisdiction over the transaction between the producers and Texas Eastern." And when this same non-existent "issue" is later restated in the decretal part of the Order, as being "Whether the Commission has jurisdiction over the *sale of leases* to Texas Eastern," the paradoxical language employed automatically negates the existence of any such "issue."

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3. Not only is it clear from this record that Continental et al. sold no gas to Texas Eastern, but there is not one scintilla of evidence in the record that what Continental et al. did sell constituted a "sale in interstate commerce of natural gas for resale for ultimate public consumption." The complete absence of any such evidence likewise eliminates the possibility that any "issue" of jurisdiction over Continental et al. can be "raised by the record in this proceeding" or be "presently before the Commission."

4. As we thought we had made clear in Continental's previous Application for Rehearing (pp. 30-31), slapping the false label of "producers" upon Continental et al. is futile. The fact remains that Continental et al. didn't produce a molecule of the Rayne Field gas that went into Texas Eastern's interstate system. Yet the same misleading play on words is repeated four times in a row on page 2 of the April 2nd Order.

5. All of the applications for rehearing addressed to the Commission's Opinion No. 378 and accompanying Order of February 6, 1963, laid stress on the facts and the law which preclude the Commission from asserting jurisdiction over Continental et al. under the doctrine of the law of the case. Continental's Application dealt with this question *in extenso* (pp. 8, 22-26, 37-41, 45-46, 48-54, 57), so there is no need to repeat that full discussion here. It is highly significant,

however, that this vitally important question is not even mentioned in the Commission's Order of April 2, 1963. Indeed, that Order again disregards the established law of the case and again disobeys the Court of Appeals' remand by insisting that the main issue to be determined is "whether we [FPC] have jurisdiction over the transaction between the producers and Texas Eastern," or, as later rephrased: "Whether the Commission has jurisdiction over the sale of leases to Texas Eastern."

6. Continental earlier Application for Rehearing further demonstrated (pp. 8, 10-11, 14, 46-48, 55-57) that the IRS tax ruling, rendered on January 13, 1959, by a coordinate branch of the Federal Government, is binding upon the Commission as res judicata, and hence also precludes FPC from making a subsequent contrary ruling. The IRS found, on the basis of the documents evidencing

the transaction of July 27, 1959, between Continental et al. and Texas Eastern, that such transaction consisted of a sale of "leasehold rights." In its Opinion No. 378 and Order of February 6, 1963, the Commission found, on the basis of the self-same documents, that the transaction consisted of a sale of "natural gas." (Only by so holding could the Commission pretend that the transaction had been "jurisdictional.") The IRS ruling came first, however, and as a matter of law could not later be disregarded or contravened by the

FPC. The Commission's Order of April 2, 1963, is likewise significantly silent on this phase of the case.

III.

Errors in the Order of April 2, 1963, with Respect to "Issues" of "Public Interest," "Rescission" and "New Arrangements"

The illusory "evidentiary hearing" which the Commission's Order of April 2, 1963, holds out with one hand—and then snatches back with the other—would ostensibly afford Continental et al. an unrequested and patently disadvantageous "opportunity" to adduce evidence on two additional "issues":

> "(2) whether the lease sale type of arrangement between the producers and Texas Eastern is in the public interest," and
>
> "(3) whether the lease-sale arrangement may be rescinded and another arrangement substituted."

The errors inherent in this and related portions of the Order of April 2, 1963, are as follows:

1. The two additional "issues" are subordinate to, and wholly dependent upon, the jurisdictional "issue." Since the Commission clearly lacks jurisdiction over the sale of leases, there is no reason for introducing further evidence pertaining to other "issues" which assume, contrary to fact and law, that the Commission possesses such jurisdiction.

2. The Court of Appeals' adjudication and remand prohibited any further FPC proceedings which would be inconsistent with the Court's opinion. The judicial remand also limited subsequent FPC proceedings to one of two courses, each of which could involve and affect Texas Eastern only. The April 2nd Order proposes that the "evidentiary hearing" should deal not only with the "jurisdictional question" but with the subordinate "issues" above quoted. The proposal respecting these two additional issues would call for FPC proceedings which are totally inconsistent with the Court of Appeals' opinion and hence in violation of the Court's adjudication and remand.

3. As used by the Commission, the term "in the public interest" is too vague, ambiguous and whimsical to define any "issue." The lease sale transaction was emphatically found by the Commission in its Opinion No. 322, issued June 23, 1959, to be "in the public interest." Based on the identical record, the same transaction was found by the Commission on February 6, 1963 to be "*not* in the public interest." The Order of April 2, 1963, is predicated on a finding that it is "in the public interest" to offer Continental et al. a phoney "evidentiary hearing" on "issues" which have already either been finally decided by the Court of Appeals or have been prohibited by that Court from being considered by the Commission.

In short, the record here shows that what is "in the public interest" means, when FPC employs that phrase, anything that the Commission desires to accomplish at the moment. Under these circumstances, the invitation to Continental to state what evidence it would like to introduce to satisfy the Commission's present notion of what is "in the public interest" is perfectly idle—particularly when the Commission declares in the same breath that Opinion No. 378 represents its final pronouncement on the subject of "public interest" in this case.

4. Whether the FPC has authority to force Continental et al. to agree to rescind their four-year-old leasehold conveyance and to agree to substitute some new "arrangement," presents purely a question of law. No "evidentiary hearing" on that issue is required. Everything we wish to say on this subject has already been said at pages 8, 9 and 79 through 86 of our earlier Application for Rehearing.

IV.

The Order of April 2, 1963, Granted No Rehearing or Other Relief Requested by the Parties. It Was Simply a Face-Saving Device and Possibly a Trap

Continental's earlier Application for Rehearing showed conclusively (pp. 8 and 58 through 78) that the Commission had deprived Continental et al. of due process of law in flagrant violation of the Fifth Amendment to the Constitution of the United States. The Order of April 2,

1963, was obviously not designed to grant a rehearing or any of the other relief Continental has requested, but primarily to extricate the Commission, if possible, from

the consequences of its reckless disregard of constitutional rights.

The April 2nd Order makes it abundantly clear that this Commission has no intention of again changing its mind:

> "We think there is no merit to the contentions that the jurisdictional question was not in issue in the remanded proceedings . . ."
>
> "All four of the producers have argued at length the jurisdictional question raised by the record in this proceeding on legal grounds in their applications for rehearing and nothing in their petitions persuades us that on the basis of the facts presently before us we should reconsider Opinion No. 378."

All of the facts we rely upon pertaining to the "jurisdictional question" were cited and discussed at length in Continental's 88-page Application for Rehearing addressed to Opinion No. 378. We there expressed no "desire" for "a hearing to supplement the record." (The statement in the Order of April 2nd that we "indicated" such a "desire" is mistaken.) The fact that we had no "desire" to put in more evidence should have been clear from the fact that, as the Order observes, we failed to indicate "in what respect the record is incomplete." Moreover, the prayer for relief at the end of Continental's petition (pp. 87-88) contained nothing even resembling a request for a further "evidentiary hearing." Yet, that is the very "relief" which this curious

Order grants:

> "Before making further disposition of these proceedings we shall therefore grant rehearing to afford the four producers an opportunity to show whether a

proper resolution of this matter requires a further evidentiary hearing."

Why should the Order of April 2, 1963, grant this unrequested, unnecessary and unprecedented form of "rehearing"? A study of the Order indicates that the objectives back of it were, first and foremost, to attempt to save face, and, perhaps secondly, to attempt to entrap Continental et al.

A. *The Face-Saving Objective of the Order.*

The face-saving effort starts with an argument that the Commission's utter disregard for constitutional rights can be explained away and should be condoned. Without any factual basis or justification, the Order avers that Continental "was or should have been aware that its role of being only 'nominally a party' in the case was being seriously challenged by the Staff." Then, the Order speculates that Sun, Marr and General Crude "probably also had actual knowledge that the status of their sales to Texas Eastern was being raised before the Commission." The short answer to such unsupported excuses and guesses appears at page 73 of Continental's prior Application for Rehearing:

"Certainly, Continental (or any of the other Assignors who, perchance, saw it) was entitled to rely on the Commission's Order of July 14th. With equal certitude, Continental et al. were fully justified in relying on

the Commission to honor the judicially established law of the case and to obey faithfully the Court of Appeals' remand."

Next, the Order of April 2nd expresses feigned "doubt that any of the producers were deprived of due process." This self-serving pronouncement is belied by the very fact that the Commission deemed it expedient to issue the senseless Order of April 2nd.

Next, the Commission's predicament is characterized as being "a matter of first impression," which means, apparently, that this is the first time this Commission has been caught flat-footed in the forbidden pantry with its hand in the Due Process cooky jar and its face smeared with Unconstitutional jam.

The job of attempted face-saving is finally wound up with sanctimonious dispensation:

> "In the special circumstances of this case we believe we should take extra precautions to assure that the producers have a full opportunity to present their case."

The "extra precautions," specified later in the Order, turn out to be so precautious that the proffered "opportunity" is completely empty, instead of "full." Continental et al. are called upon to show in advance whether they have any additional "significant" evidence and to reveal what they expect to prove thereby. Such evidence, if any, must pertain to selected "issues" which the Commission is

foreclosed from trying, considering or deciding by the judicially established law of the case. Then, after proclaiming that the "producers'" prior petitions have failed to "persuade" the Commission to reconsider Opinion No. 378, the Order provides that:

> "If it appears that significant new evidence relevant to the issues referred to above will be introduced, we shall set the case for further hearing . . ."

In other words, the Commission has no intention whatever of granting the proffered "evidentiary hearing"—that is why these elaborate "extra precautions" were taken!

The unconstitutionality of Opinion No. 378 and the accompanying Order of February 6, 1963, did not arise out of mere failure to permit Continental et al. to introduce a few bits of additional evidence: it was caused by giving notice (the Order of July 14, 1961) that the reopened proceedings would be conducted in strict compliance with the Court of Appeals' adjudication; by so framing the issues that Texas Eastern alone had the burden and Continental et al. had no reason or right to participate in any of the post-remand proceedings or arguments; and then by saddling Texas Eastern's burden upon Continental et al. when they were absent, unrepresented and defenseless, in violation of every procedural and substantive statute, rule of common law, and principle of equity applicable to this case.

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The unconstitutional taint afflicting Opinion and Order No. 378 cannot now be cured by self-serving excuses or any variety of palliatives such as belated "extra precautions" and hollow "full opportunities." *If* Continental et al. had been actual parties in interest in the reopened proceedings, and *if* the jurisdictional issue had been open for redetermination therein, and *if* Continental et al. had taken active parts throughout, who can say now what decision the Commission would have rendered instead of Opinion No. 378? What other evidence, if any, would Continental et al. have adduced? What would have been brought out through Continental's, Sun's, Marr's, and General Crude's cross examinations of witnesses? What persuasive arguments would Continental et al. have advanced in their briefs and upon oral argument? At this

juncture, it is much too late to turn back the clock, reconstruct the past, and find correct answers to these questions.

The Commission decided this case in what was, so far as Continental et al. are concerned, an *ex parte* proceeding. As a consequence, the Commission arrived at a completely illogical, unfair and unlawful result. To make matters worse, the Commission has now proclaimed its adamant determination to stick by that result, no matter how erroneous it has been shown to be in our previous Application for Rehearing. No gesture in the direction of "extra

precautions," nor any bestowal of "full opportunities," nor any labeling of an order which effectively denies rehearing as an "Order Granting Applications for Rehearing," can undo the injustice, the illegality or the unconstitutionality of Opinion No. 378 and its accompanying Order of February 6, 1963.

B. *The Entrapment Feature of the Order*

If Continental et al. were to accept the April 2nd Order's invitation to disclose "significant new evidence," explain its probative effect, and thereby persuade the Commission to reopen the record, Continental et al. could be slaughtered like sitting ducks.

Continental has consistently maintained that the jurisdictional "issue" is entirely out of this case and cannot be reconsidered or redetermined by the Commission in view of (a) the Supreme Court's *Panhandle* decision, (b) the Court of Appeals' adjudication of the law of this case, (c) the explicit procedural limitations prescribed by the Court of Appeals' opinion and remand, and (d) the IRS ruling of January 13, 1959. The April 2nd Order's invitation to seek an "evidentiary hearing" on the "jurisdictional question" constitutes an invitation to Continental

et al. to concede that the FPC's erroneous and illegal assertion of jurisdiction is, indeed, an "issue" which can now properly and lawfully be reconsidered and redetermined by the Commission

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Acceptance of that invitation would necessarily mean a waiver and abandonment by Continental of its entire position and all of its objections to any trial, consideration or determination of the "jurisdictional question."

Furthermore, if Continental were to seek the proffered "evidentiary hearing," and if the proceedings should be reopened, that would permit the Staff and Intervenors to mess up the present clean record and enable them then to argue that the messed-up record is sufficiently different from the clean one reviewed by the Court of Appeals to make inapplicable here the doctrine of the law of the case.

Continental has no intention of being caught in such a trap. The April 2nd Order's invitation to seek a further "evidentiary hearing" is, therefore, in all respects declined.

V.

THE APPENDICES HERETO

To eliminate any contention that the documents listed below are not technically a part of the record in this proceeding, or that they have not been formally incorporated in such record by reference, or that they may not be judicially noticed, true and complete copies of such documents are appended hereto and are hereby made a part of this Application for Rehearing:

1. The IRS tax ruling dated January 13, 1959.

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2. The Commission's Brief, dated July 11, 1960, filed with the United States Court of Appeals for the Dis-

trict of Columbia in case No. 15,412, entitled *Public Service Commission of the State of New York, Petitioner, v. Federal Power Commission, Respondent.*

3. The Judgment, dated December 8, 1960, of said Court of Appeals in said case No. 15,412, as filed with and docketed by the Commission in March 6, 1961, together with the opinion of said Court of Appeals in said case, being the same opinion which is reported in 287 F. 2d 143.

CONCLUSION

In addition to the requests contained in the Conclusion of Continental's previous Application for Rehearing, appearing at pages 87 and 88 thereof, Continental requests that the Commission grant rehearing of its Order Granting Applications for Rehearing issued April 2, 1963, and that said Order likewise be withdrawn and vacated.

Respectfully submitted,

LLOYD F. THANHOUSER
BRUCE R. MERRILL
THOMAS H. BURTON
JOHN M. BERLINGER
Attorneys for
Continental Oil Company

By LLOYD F. THANHOUSER
Lloyd F. Thanhouser

Dated at Houston, Texas
this 29th day of April, 1963

4615

AFFIDAVIT

Before me, the undersigned authority, on this day personally appeared Lloyd F. Thanhouser, who, being by me duly sworn, on oath deposes and says: That he is Vice President and General Counsel of Continental Oil Company; that he has prepared and read the foregoing Application of Continental Oil Company for Rehearing, and that the facts stated therein are true to the best of his knowledge, information, and belief.

LLOYD F. THANHOUSER
Lloyd F. Thanhouser

Sworn to and subscribed before me, this 29th day of April, 1963.

HALLIE P. MADELEY
Notary Public in and for
Harris County, Texas

(SEAL)

4616-4620

CERTIFICATE OF SERVICE

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Appendix 1

U. S. TREASURY DEPARTMENT
WASHINGTON 25

OFFICE OF
COMMISSIONER OF INTERNAL REVENUE

—

ADDRESS REPLY TO
COMMISSIONER OF INTERNAL REVENUE
WASHINGTON 25, D. C.
AND REFER TO
T:R
T:S:EN-JFH

January 13, 1959

Mr. Charles R. Bell

Director, Tax Division—Financial Department
Continental Oil Company
P. O. Box 2197
Houston 1, Texas

In re: Request for a ruling,
Continental Oil Company et al., Grantors

Dear Mr. Bell:

This is in reply to your letter of October 31, 1958, in which you request the Commissioner of Internal Revenue to rule on the tax consequences of a proposed transaction between Continental Oil Company (Conoco), (Sun Oil Company (Sun), General Crude Oil Company (General), and Mr. M. H. Marr, husband of Adah Kleinsmid (Marr), collectively called Grantors, and the Louisiana Gas Corporation (Grantee). The pertinent facts as presented in

your letters and the accompanying instruments, together with statements made at conferences, are summarized as follows:

Grantors collectively control 96% of the operating interests in developed and producing oil, gas, and mineral leases of certain portions of the Rayne Field, Acadia Parish, Louisiana, on which there are currently 18 gas wells, producing from the reservoirs above the base of the Nodosaria "A" sands. The gas in these reservoirs, estimated to contain 783,499,000,000 cubic feet of gas, contains substantial quantities of liquid hydrocarbons which can be removed, after severance, by mechanical and other separation methods.

The Grantors propose, individually and severally, to sell to Grantee, and Grantee proposes to buy from Grantors, all of their operating interests in oil, gas, and minerals situated within the limits of the leases, together with all of Grantors' interests in gas wells and related lease and well equipment, gathering and flow lines,

tanks, separators, and other equipment and personal property located in the wells and on the leaseholds, with certain reservations as explained below. The draft of "Assignment and Conveyance" contains the following provisions.

The Grantors will retain and reserve unto themselves:

I. *Leasehold Rights.*

Deep Rights: All leasehold rights below the base of the Nodosaria "A" Sand.

Oil and other minerals, except gas and condensates, which are found or produced from the properties.

II. *Production Payment*—A production payment will be owned by, and payable directly to, each of the Grantors

in the following proportions:—Continental Oil Company 55.930697%—Sun Oil Company 31.669095%—M. H. Marr 8.404469%—General Crude Oil Company 3.995739%, and is applicable to new leases on the mineral interests covered which may be acquired by Grantee or its successors during the term of the production payment. The production payment will be payable monthly out of condensates and is controlled by the following outlined provisions.

A. Condensate—

(1) Separator Liquids. After Grantee has recovered from the proceeds received by Grantee from the sale of the separator liquid attributable to the net interest in production Grantee's cost of producing and operating the leasehold rights and facilities, Grantors shall be paid 100% of the remaining proceeds received by Grantee from the sale of all separator liquids.

The maximum amount to be received by Grantee under the operating agreements as described in the exhibits from the proceeds of the sale of the separator liquids shall be the actual cost incurred by Grantee, without interest, for its services and labor, plus a fixed sum of $4,000 per month.

Each Grantor reserves the right to a yearly audit of the books and accounts relative to the operation of the leasehold. The cost of producing and operating shall include, but is not limited to expenditures in connection with the reworking, recompletion, plugging back and abandonment of wells, maintenance and operation of wells and lease and well equipment, field gathering lines and separation facilities, and costs and services and equipment purchased relating to all of the

foregoing, but shall not include the cost of drilling and equipping through the Christmas tree, (or plugging and

abandoning as a dry hole) of any well which may be commercial hereafter, or the cost of deepening any existing well below the present casing.

(2) Natural Gas Liquids. Grantee will construct and operate after the delivery of the "Assignment of Conveyance" a gas processing plant to extract natural gas liquid. The proceeds from the sale of such natural gas liquid shall be made in the same manner as provided in determining net interest in production from separator liquid except for a production payment in existence prior to the execution of the "Assignment of Conveyance".

B. Limitations on Production Payment:

The production payment attributable to the net interest in production covered by this instrument shall continue in effect until the gas production saved and taken by Grantee equals 613,406,770,000 cubic feet of gas, measured after condensate is removed, or until the economically recoverable gas reserves in the assigned and conveyed leasehold rights equal 30 billion cubic feet of gas, whichever occurs first, whereupon said production payment shall cease and terminate.

The consideration for the sale and purchase is $134,395,700 payable $12,420,500 cash and $121,975,200 represented by notes. It is agreed that the consideration for the sale is to be paid to and received by the respective sellers in the following percentages and amounts:

	Percentages	Total Amount	Payable In	
			Cash	Notes
Conoco	55.930697	$ 75,168,451.75	$ 6,946,931.75	$ 68,221,520
Sun	31.669095	42,561,901.91	3,933,373.91	38,628,528
Marr	8.404469	11,295,244.94	1,043,852.94	10,251,392
General	3.995739	5,370,101.40	496,341.40	4,873,760
	100.000000	$134,395,700.00	$12,420,500.00	$121,975,200

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The promissory notes will be secured by a first mortgage on the assigned leaseholds, and will be payable in monthly installments without interest from the date to maturity, all as more fully set out in the draft of Promissory Note and the draft of Act of Mortgage.

Conoco, in the capacity of independent contractor, will operate the properties to be assigned to Grantee, and for such services, Grantee shall pay Conoco a sum equal to all costs and expenses incurred by Conoco in connection with the performance of its obligations under the terms of a Management agreement, plus a management fee of $4,000 per month.

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If any well drilled by the Continental Oil Company and the other present owners is a gas well, as classified by the State Conservation Commissioner, the Louisiana Gas Company will have an option to purchase such well, while if the Louisiana Gas Company drills a well which proves to be an oil well, as classified by the State Conservation Commission, Continental and the other lessees will have the option to purchase that well. Any oil recovered from a gas well which becomes to any extent an oil well is to be considered as separator liquid and as such will be included in the retained production payment.

The leasehold rights to be sold to Grantee were acquired by the respective Grantors in the usual course of business and with the expectation that the oil, gas and mineral deposits discovered thereon would be exploited and sold as produced. All of such rights owned by the respective Grantors have been held for more than six months.

You have asked that a ruling be issued holding that the gain from the proposed sale shall be recognized under the provisions of section 1231 of the Internal Revenue Code of 1954.

Based on the foregoing, it is held that the gain on the sale of the properties being disposed of will be subject to the tax treatment provided by section 1231 to the extent that such properties qualify for such treatment. The bases of the properties involved, the period of ownership, and the status of the taxpayer as a non-dealer in such properties are questions of fact determinable by the District Director, or his representative, of the district in which Federal income tax return of the taxpayer is filed.

It is important that a copy of this letter be attached to the return of the taxpayer for the year in which the proposed transaction is consummated. Accordingly, a copy is attached for that purpose.

Very truly yours,

HAROLD T. SWARTZ
Assistant Commissioner

Enclosures: (2)

cc: OLF, GW, TWS (34)

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Appendix 2

BRIEF FOR RESPONDENT FEDERAL POWER COMMISSION

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15,412

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
Petitioner,

v.

FEDERAL POWER COMMISSION, *Respondent.*

ON PETITION TO REVIEW ORDER OF THE
FEDERAL POWER COMMISSION

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QUESTIONS PRESENTED

An interstate natural-gas pipeline company sought to expand its transportation and sale facilities. In order to meet consumer need for a greater gas supply it planned itself to produce from certain previously-unoperated leases. It planned to acquire the leases from several assignors without Federal Power Commission approval, as it was free to do. It applied, however, for certificate authority to construct transmission facilities, and to transport through its pipeline, deliver, and sell the gas it would produce from the leaseholds. The Commision issued the certi-

ficate applied for. In respondent's opinion the questions are:

1. Whether the Commission, having taken into account the pipeline company's leasehold acquisition costs, abused its discretion in determining that "public convenience and necessity" required the expansion of jurisdictional activities.

2. Whether the Commission abused its discretion by refusing to insist that the pipeline company develop on the record, not only its own costs, but the assignors' costs as well.

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COUNTERSTATEMENT OF THE CASE

This petition seeks review of a Federal Power Commission order which authorizes expanded deliveries and sales of natural gas by Texas Eastern Transmission Corporation to several utilities along its system—the gas to be produced by Texas Eastern itself from leaseholds it would buy in Acadia Parish, Louisiana. Petitioner, Public Service Commission of the State of New York (PSC),[1] objects

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neither to the increased sales nor the transportation facilities which the Commission authorized. The Commission's order does not authorize the purchase of the leases —undisputedly such authorization is outside its jurisdiction (*infra*, p. 17). But petitioner complains that by authorizing the transportation and sale of gas which Texas

[1] PSC was a party to the certificate proceeding before the Commission.

Eastern will produce from the leaseholds, the Commission has given a "blesing" [2] to the price Texas Eastern proposes to pay for the leaseholds in that non-jurisdictional transaction. Petitioner would "damn" the price, not "bless" it; and for such apostolic error it asks the Court to declare the Commission's order unlawful.

1. *Texas Eastern's Application*

Texas Eastern owns and operates an interstate gas pipeline system extending from Mexico to New York;[3] it is a "natural-gas company" within the meaning of the Act.[4] Texas Eastern applied to the Commission for a certificate authorizing the construction of pipeline facilities and the delivery and sale of natural gas.[5] In order to show the adequacy of its gas supply to justify the construction, Texas Eastern spread before the Commission its plan of acquiring and operating certain leaseholds in Rayne field, Louisiana.

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2 The word "blessing" in petitioner's brief is used three times to characterize the effect of the Commission's certification of transportation on the prices paid for the leaseholds (Pet. Br. 11, 24).

3 A system map appears at R. 2283. Texas Eastern's diversified interests include oil and gas production, petroleum products pipelining, and oil refining.

4 Natural Gas Act, Act of June 21, 1938, c. 556, 52 Stat. 821-833, as amended, 15 U.S.C. 717-717w.

5 Texas Eastern's applications were in F.P.C. Docket Nos. G-12446 and G-12447. The latter docket represents the separate application of a former affiliate, Texas Eastern Penn-Jersey Transmission Corporation. The two companies merged during the course of the administrative proceedings.

Texas Eastern planned to buy the leases from the four companies[6] (hereinafter referred to as "assignors"[7]) which were the original grantees from the landowners. Texas Eastern also planned to acquire certain minority interests in Rayne field.

PSC's complaint centers about the sale of leases. It does not concern a purchase of gas in place within the underground reservoir (which Louisiana mineral law does not recognize). Nor does it involve a contract to sell gas as produced by the assignors. It is true that initially the four assignors planned to produce and operate the field themselves. They contracted to sell to Texas Eastern and applied for certificates of convenience and necessity. Prior to Commission action, however, they terminated the contracts and Texas Eastern negotiated a lease transfer arrangement instead. So far as we can discern, the original program (PSC's "Phase I," Br. 3-7) has little bearing on the issues before this Court.

Neither Texas Eastern nor the assignors applied for certificates permitting transfer of the leases. PSC has never contended that the Act requires such certificates or empowers the Commission to issue them.[8] Nevertheless it bases its controversy on the acquisition costs.

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[6] Continental Oil Company, M. H. Marr, Sun Oil Company, and General Crude Oil Company.

[7] We use "assignors" for the sake of clarity. PSC refers to the companies as "producers" and it is true that they are elsewhere engaged in production. In terms of their overall company operations the assignors are "independent producers" (as well as "natural-gas companies" within the meaning of the Act). As regards Rayne field they might fairly be characterized the "developers"; but they will not produce the gas whose cost is the bone of contention in this case.

[8] We discuss the want of Commission jurisdiction over the transfer of leases at p. 17 *infra*.

Texas Eastern's project depended on acquiring gas in Rayne field in order to meet consumer need for 101,660

Mcf[9] per day of additional gas. The Commission's findings as to such need, and other "conventional" certificating factors such as facilities and financing, are based upon an extensive showing at the hearings and are noncontroversial. The only dispute relates to the Commission's discussion of "Gas supply and acquisition of Rayne Field reserves" (R. 3716, 21 FPC 863). The evidence introduced by Texas Eastern was uncontroverted.

2. The Evidence

a. *The Rayne field reserves*

Rayne field includes several tested gas-bearing strata. An independent geologist estimated the proven saleable reserves in all of Rayne field, as of January 1, 1959, to be 1,021,221 MMcf[10] of which Texas Eastern planned to acquire 988,771 MMcf (R. 1346, 2610).[11] The geological estimate of recoverable reserves is conservative; it rests exclusively

9 "Mcf" is the standard abbreviation for one thousand cubic feet. All gas volumes in this brief are stated at the standard temperature measurement base of 60° Fahrenheit and at a pressure base of 14.73 psia (pounds per square inch, absolute). When it comes to deriving a unit cost per Mcf for the Rayne field reserves, however, the record suffers a discrepancy in that some components of that cost were calculated at 14.73 psia (e.g., R. 1355 as compared with R. 1464-7, 1704) and others at 15.025 psia (e.g., all references to Louisiana severance tax). Mathematical precision would require an adjustment of 2% in some of the components and a lesser percentage in the total cost per Mcf. But since none of the parties troubled to call the discrepancy to the Commission's attention we shall follow PSC's lead in ignoring it.

10 Million cubic feet. Rayne field is an unusually large gas reserve (R. 746-7).

11 The difference between these figures represents gas, to be produced from a discrete formation, which has been dedicated to another pipeline company.

upon proven gas-bearing sands (R. 1450) and excludes other unproven sands which may well contain substantial further volumes (R. 1454-5); it assumes abandonment of operations when reservoir pressure drops to 515 pounds, which would leave some 91,220 MMcf of the presently proven reserves unrecovered (R. 1455, 1467). The 988,771 MMcf thus estimated represents the reserves underlying the acquisitions which PSC questions.

The acquisitions encompass two different categories of acreage. Some 95% of the surface, and of the reserves,[12] constituted the "majority interest". This, in turn, was divided into a "working interest" held by the four assignors under some 150 leases (R. 2640-2699) and a "royalty interest" retained by their lessors. Some 5% of the surface, the "minority interest," was held by other lessees. Texas Eastern had secured the majority working interest, comprising some 79% of all interests in the relevant acreage, by a complicated transaction which we outline below. It had not yet completed negotiations with the owners of royalty and minority interests, which together involve some 21% of all interests in the acreage. The Commission accepted Texas Eastern's unchallenged forecast that it would shortly secure the royalty and minority shares.

The assignors had developed the leases in the sense that they had drilled and successfully completed 18 wells (R. 1439, 1626). These wells could amply produce the necessary gas without further drilling (R. 1463). So far as the record shows, however, the assignors had made no sales of gas and, in that sense, had not operated their leaseholds.

[12] Rayne field is largely unitized so that surface acreage determines the proportionate share which a given producer may withdraw (R. 1449). Under Louisiana law, however, no landowner has title to underground reserves in place (R. 1412).

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b. *"Form" of the lease sale transaction*

Texas Eastern arranged to acquire the leaseholds through an intermediary company, Louisiana Gas Corporation.[13] The four assignors entered into a contract with Louisiana Gas (the "Lease Sale Agreement", R. 2618-2624) under which the assignors agreed to sell and Louisi-

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ana Gas to purchase the leases, gas wells and appurtenant equipment.[14] By that contract, the assignors undertook to transfer to Louisiana Gas certain interests in the leases by and in accordance with an instrument of "Assignment and Conveyance" (R. 2625-2639). The assignors would wholly alienate their rights to produce natural gas; they would reserve the leasehold rights to any minerals other than gas and a "production payment" interest in condensate liquids extracted from the gas. See, *infra*, p. 7. The agreed sale price was $134,395,700, payable $12,420,500 in cash and $121,975,200 (R. 2619) in sixteen non-interest bearing notes (R. 2777). The notes would fall due on sixteen consecutive years and be payable by Louisiana Gas in equal monthly installments. Upon acquiring the lease interests under the "Assignment and Conveyance", Louisiana Gas would make the cash payment, execute the

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[13] Louisiana Gas was created to serve as an intermediary. Its assets are nominal. It is not an affiliate of Texas Eastern's. (Louisiana Gas' stockholders, officers and directors are members of a law firm which represents Texas Eastern.) There was evidence that the device of transferring oil and gas leases through an intermediary corporation is not peculiar to the instant acquisition (R. 1636-1638).

[14] The agreement was conditioned upon (1) approval of assignors' title to the leases by Louisiana Gas' attorneys, (2) a ruling by the Internal Revenue Service that assignors' gains from the sale of leases were entitled to long-term capital gains treatment, (3) the Commission's certificating construction of facilities for transporting the Rayne field gas to market, and (4) withdrawal of the assignors' earlier applications for certificate authority to sell gas produced by them from the leases. All of these conditions have been met.

notes and secure payment of the notes by executing an "Act of Mortgage and Pledge" (R. 2771-2776) covering the lease interests (R. 2621).

Thereupon, and in accordance with a "Lease Purchase Agreement" between Louisiana Gas and Texas Eastern (R. 2613-2616), the former would assign its newly-acquired interest in the leaseholds to Texas Eastern for $12,420,500 in cash (payable on the day of the closing between the assignors and Louisiana Gas). Texas Eastern would acquire the leases, wells and related equipment, subject to the "Acts of Mortgage and Pledge," under a "Conveyance" from Louisiana Gas (R. 2704-2706).

Texas Eastern would not assume any corporate liability on the sixteen non-interest bearing notes (totalling $121,975,200). Foreclosure of the mortgage would be the assignors' only recourse in case of default. Texas Eastern

would, of course, normally provide Louisiana Gas with funds to meet these notes so as to protect the leases from foreclosure. But should some disaster, such as "cratering",[15] destroy the reservoir Texas Eastern would be free to surrender the leases without incurring liability on any of the outstanding notes (R. 1723).

Thus for $134,395,700 Texas Eastern would acquire the leases covering majority interest acreage and, consequently, the working interest in any gas it produced from them. In other words, it would have full title to such gas subject only to the royalty interest of the original landowner (*i.e.*, the assignors' grantor, R. 1427-1429), which interest it planned also to acquire (see, *infra*, pp. 8-9). In addition to the natural gas, Texas Eastern would acquire the liquid

[15] Cratering is a collapse of the formation overlying the reservoir which may permit an unchecked escape and loss of gas. Texas Eastern's policy witness described it as a relatively rare phenomenon (R. 1724-1725).

condensate removed from the gas subject to a "production payment" reserved by the assignors.

The production payment, in essence, makes Texas Eastern the assignors' agent as to the liquid condensate.[16] (Condensate includes such hydrocarbons as gasoline, propane and butane.[17]) The assignors reserved the proceeds from the sale of condensate with two significant limitations. First, Texas Eastern could recover the direct expenses of operating Rayne field (plus a fixed amount for estimated overheads) out of the condensate revenues. Texas Eastern's vice-president in charge of gas supply explained that the company expected these proceeds from sale of condensate would fully cover all operating expenses (R. 1633-1634). Second, the production payment to the assignors would terminate altogether prior to the exhaustion of all economically recoverable reserves in the reservoir. Thus, toward the

end of the life of the field, Texas Eastern would probably have added revenues from the sale of condensate (R. 1725).

c. *Cost of Rayne field reserves to Texas Eastern*

Texas Eastern presented its proposed accounting treatment of the costs of acquiring the majority working interest. It proposed to capitalize the $12,420,500 down payment. Upon actual withdrawal of each Mcf from the reservoir, Texas Eastern will amortize on a unit depletion basis. It intended to expense the $121,975,200 covered by the promissory notes, charging each payment to an "other deferred debits" account as paid. Again, Texas Eastern

[16] The nature, history, and function of the "production payment" device is explained at R. 1627-8, 1632-3.

[17] Such extracted products are generally assumed not to be "natural gas" within the meaning of the Act.

will credit that account, on a unit depletion basis, as each Mcf is withdrawn.

A unit direct cost of 17.15 cents per Mcf for the majority working interest can be arithmetically derived.[18] While 17.15 cents per Mcf represents the total unit gas revenue to the assignors, two additional factors could enter into Texas Eastern's total cost of service. First, Texas Eastern expected to earn a return on the capitalized $12,420,500 (adjusted for amortized depletion) and to pay federal income taxes on such return. Second, Texas Eastern, as producer of the gas, would have to pay the Louisiana severance tax. Texas Eastern computed the return and federal tax as 2.3 cents per Mcf, assuming a 6¾% rate of return,[19] which brings the cost up to 19.45 cents per Mcf. The Louisiana severance tax has been 2.3 cents, per Mcf, at all relevant times.

Texas Eastern was in the process of negotiating an agreement with the royalty and minority interest owners (R. 1361). While the terms could not be certain, Texas Eastern hoped to pay no more than the 17.15 cents per Mcf which the (majority) assignors would receive (R. 1358, 1360-1361). Nonetheless, in order to present a conservative

picture, Texas Eastern's evidence instead assumed a maximum cost of 22.6 cents per Mcf, exclusive of Louisiana severance tax (R. 1358, 1360-1361). When this figure is averaged in, the derived unit cost of all gas to be acquired in Rayne field is 20.59 cents per Mcf. Adding Louisiana

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[18] By dividing 733,498,800 Mcf (the majority working interest proportion of the estimated reserve of 988,771,000 Mcf) into $134,395,700.

[19] Texas Eastern is requesting that rate of return in a pending rate case, in F.P.C. Docket No. G-12706. The Commission has not approved 6¾%.

severance tax[20] produces a total unit cost to Texas Eastern of 22.89 cents per Mcf.

Such estimated unit costs are tentative and subject to the following possible infirmities: If, as predicted, there turns out to be more gas in the dedicated acreage than the tests had proven by January 1, 1959, then the cost per Mcf will be lower. If the minority and royalty interests are acquired for less than the 22.6 cents per Mcf maximum, then unit costs will be lower. If the Commission refuses to authorize a 6¾% rate of return for Texas Eastern then the return, and consequently the cost per Mcf will be lower. Finally, the derived unit costs of gas gives no weight at all to potential profits from sale of condensate toward the end of the life of the field.

The record does not go behind the acquisition costs to Texas Eastern. It does not explore the original costs to the assignors of securing or developing these leases or of exploring for gas elsewhere. PSC did not request the issuance of subpoenas compelling the assignors to disclose such data.

d. *Advantages of purchasing the Rayne field leases*

Whatever the precise unit cost turns out to be, the form of the acquisition offers several distinct advantages to Texas Eastern, the consumers served by its system, and to segments of the public not directly involved herein (R. 1356-1358, 1622-1623, 1625-1626, 1632-1636). Contracts to sell natural gas usually contain escalation provisions of one sort or another and thus pose the prospect of increasing and uncertain gas prices over the life of the contract. The acquisition of leases, coupled

[20] Assuming Texas Eastern pays all such tax. The royalty interest owners may have to pay a portion, depending on the exact arrangement negotiated with them.

with the provision for deducting amounts covering the annual expenses of operating Rayne field from the production payment, assured Texas Eastern of a fixed cost. Contracts to sell gas today oblige the purchaser to take a minimum volume when offered or pay for it as if taken. Increasingly high minima cause an inflexibility in a pipeline company's gas supply which acquisition of leases avoids. Being its own producer, Texas Eastern will be in a position to regulate its takes in terms of the seasonal and cyclical needs of its system. (*Cf.* R. 1732, 1772.) Moreover, while gas purchases could activate "favored-nations" and other indeterminate pricing clauses in prior contracts, the purchase of leases cannot have such effect on either Texas Eastern's or other pipeline companies' outstanding contracts.

The advantages of securing at least part of its gas supply in the form of developed leases had led Texas Eastern to suggest such a transaction to the assignors (R. 1716). Initially they had preferred themselves to produce the leaseholds and to sell such production under contract. Even though Texas Eastern wanted to buy the leases, it was willing to enter into such contracts because of its growing need for new supplies.

Texas Eastern's witness[21] explained why he had recommended purchase of Rayne field gas (R. 113-125, 134, 142, 159). In seeking to meet the request and estimated future needs of Texas Eastern's customers he was limited to seeking reserves relatively near to the existing pipeline system. The commitment of available reserves in some areas, plus intense competition of other purchasers along the remainder of the system, made it imperative in his

[21] He had been vice-president in charge of gas supply at the time of his recommendation.

mind to seize the opportunity of contracting for the large volume of Rayne field gas.[22] Texas Eastern had suffered

several reverses in this competition for new gas; the witness particularly emphasized the number of intrastate and other nonregulated companies buying successfully in the field.[23] Given the proximity of Rayne field to Texas Eastern's system[24] and the magnitude of gas available, it seemed an extremely desirable source of supply.

Finally, there was testimony that in the lease sale negotiations Texas Eastern had based its position on many factors, including the market price for both gas leases and gas sold under contract, and that the negotiators believed the acquisition price to "be attractive on a comparative basis to the people that will consume this gas" (R. 1712-1715).

3. Arguments to the Commission

After conclusion of the hearing, Texas Eastern moved to omit the presiding examiner's decision. PSC did not object to the motion (R. 3692) which the Commission granted on April 6, 1959 (R. 3700-3702). The examiner thereupon certified the record to the Commission which itself received briefs. Only PSC opposed issuance of the

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22 The witness' reference to over 750 billion cubic feet (R. 120) goes to an early reserve estimate of the majority interest, based on more limited tests and drilling. Under the final programming Texas Eastern would acquire a greater interest and even larger reserves.

23 One such puchaser, Consolidated Edison Company of New York, Inc., is an out-of-state electric utility which directly purchased gas for boiler fuel. The Commission's attempt to foil that transactions by denying a transportation certificate was set aside by the Third Circuit. The Supreme Court has granted petitions for certiorari. See, *infra*, p. 20, note 35.

24 The field is some 19 miles from Texas Eastern's line. Only 22 miles of pipe need be laid down.

certificate applied for, asking that the application be denied or that the "proceeding be remanded to the Presiding Examiner to determine upon what price for the acquisition of the Rayne Field leaseholds, public convenience and necessity would require authorization of the related construction herein proposed by Texas Eastern."[25] PSC's principal contention was that the Commission should not certificate construction until it had utilized its "first, last and only opportunity to require producer [*i.e.*, assignor] disclosure of the costs associated with this [Rayne field]

gas".[26] Three of Texas Eastern's customers who had previously opposed gas sales by the assignors to Texas Eastern[27] voiced no objection to issuance of a certificate for facilities to connect the purchased leases to Texas Eastern's system.[28] On June 23, 1959, the Commission issued the order complained of authorizing the construction of facilities and the delivery and sale of gas (R. 3708-3724). 21 FPC 860.

4. The Commission's Opinion

The Commission noted that PSC stood alone in opposing Texas Eastern's project. It expressly disclaimed power to certificate the acquisition of the Rayne field leases. It rejected PSC's demand that it look behind the price Texas Eastern would pay the assignors so as to examine the assignors' costs. It did, however, consider both the price to the assignors and the other costs which Texas Eastern

[25] PSC brief before the Commission, p. 9.

[26] *Id.*, at p. 6.

[27] Public Service Electric and Gas Company, Philadelphia Electric Company, and The United Gas Improvement Company.

[28] See Public Service Electric and Gas Company's statement in lieu of brief (R. 3696).

would incur in connection with the leases as factors bearing upon the "public convenience and necessity" of the proposed project. R. 3716-3717, 21 FPC 863-4.

The Commission analyzed the lease transfer arrangement. It noted that Texas Eastern's costs of operating Rayne field would be reimbursed from the assignor's "production payment" revenue for the sale of condensate; and that all such revenue would belong to Texas Eastern after 613,406,770 Mcf had been removed (R. 3718, 21 FPC 865, note 6). It found that Texas Eastern had shielded itself from personal liability on the notes (R. 3718, 21 FPC 865). The Commission emphasized the importance and desirability of the very large reserve of 988,771,000 Mcf; it further noted the prospects of even higher recovery and consequent lower unit cost (R. 3719, 21 FPC 865). And the Commission stressed the proximity of Rayne field to

Texas Eastern's system (22 miles) and the low capital cost of attaching the reserve (R. 3719, 21 FPC 866).

The Commission recognized that Texas Eastern had previously contracted to buy Rayne gas from the assignors, through jurisdictional sales, but that the contracts were no longer available to it (R. 3719, 21 FPC 866). The Commission stressed that it had never approved the prices under those terminated contracts. But it pointed out that the unit cost of gas[29] under the lease acquisition was less than the price Texas Eastern had previously bargained to pay (R. 3719-3720, 21 FPC 866).

The Commission found nothing unusual about a pipeline company's owning and producing leaseholds for a portion of its gas supply; it found the form of the lease transfer not to be unique in the oil and gas business; and it found the entire transaction to have

[29] *I.e.*, the maximum cost per Mcf as developed on the record.

been conducted at arm's length (R. 3721, 21 FPC 867). The Commission noted, as further benefits to Texas Eastern's customers and the public, that the lease purchase transaction avoided future contractual escalations of field price; added flexibility to Texas Eastern's overall operations; and eliminated the chance of "triggering" escalations under "favored-nation" clauses of Texas Eastern and other pipeline gas purchase contracts (R. 3720, 21 FPC 866-7). Finally, the Commission found that "public convenience and necessity" required Texas Eastern's proposed construction and operation of facilities and sales of gas (R. 3723, 21 FPC 868).

5. PSC's Application for Rehearing

PSC timely filed an application for rehearing pursuant to Section 19 of the Act (R. 3725-3735). It urged the Commission to reconsider the certificate order (issued June 23, 1959) in the light of the Supreme Court's *CATCO* decision, *Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378 (June 22, 1959). According to PSC's application for rehearing, the Commission's opinion correctly

treated the public convenience and necessity of "a pipeline project" as being the same whether the applicant buys gas under contracts or buys leases (R. 3727). PSC ignored the fact that in the former case the Commission also determines the public convenience and necessity of the separate application for authority to sell to the pipeline company. PSC's objection seems to have been that the Commission could not lawfully certificate Texas Eastern's project because the instant record would have furnished inadequate basis for authorizing a jurisdictional sale[30] of

[30] PSC spoke of a hypothetical authorization to "purchase" (R. 3731). Since the Act makes no provision for such certificates, and in view of the context, this seems to be a circumlocution.

the gas to Texas Eastern. What evidence, or what sort of evidence was missing PSC did not say, but presumably PSC was interested in the assignors' cost in connection with Rayne field.

PSC did not question any of the Commission's findings other than the ultimate one of "public convenience and necessity."

The Commission denied rehearing on August 21, 1959 (R. 3740, 22 FPC 451). One commissioner dissented. On October 20, 1959, PSC filed the instant petition for review invoking this Court's jurisdiction under Section 19(b) of the Act.

Statutes Involved

The pertinent provisions of the Natural Gas Act of June 21, 1938, c. 556, 52 Stat. 821-833, as amended, 15 U.S.C. 717-717w, are Section 7(c) and 4(a), reproduced in the Appendix to PSC's brief at pages A-4 and A-1.

Summary of Argument

I.

The order complained of issues a certificate. The certificate authorizes the construction and operation of transportation facilities; it does not authorize the transfer of the Rayne field leases, and PSC effectively concedes that

the Commission lacks certificate jurisdiction over the lease transfer. Nonetheless, PSC's brief attempts to treat this case as if it involves a jurisdictional sale by the assignors to Texas Eastern.

The cost of the leases to Texas Eastern was an issue in the certificate proceeding because the Commission considers all factors bearing on the public interest in passing on the "public convenience and necessity" of a particular

proposal. "All factors" includes matters over which the Commission lacks direct power of compulsion. Here, the Commission properly weighed, in response to PSC's own arguments, Texas Eastern's costs and the impact of the acquisition on jurisdictional activities.

II.

PSC urges that the Commission must delve even deeper and determine the magnitude of the assignors' profits from the non-jurisdictional sale of leases. Anticipating a Texas Eastern rate case, PSC claims the acquisition price was unreasonably high. Yet the price Texas Eastern will pay was negotiated at arm's length for leases not heretofore devoted to public use. PSC's demand that the Commission look behind that price flies in the face of traditional public utility concepts. PSC insists, in effect, that the Commission use its powers over Texas Eastern's rates to regulate the prices at which any businessman may sell goods or services to Texas Eastern. Regulation does not intrude so far into our free economy. The true regulatory issue is whether Texas Eastern's management struck a prudent bargain and whether the acquisition will well or ill serve Texas Eastern's customers and the public at large. The Commission exercised a lawful discretion in determining that issue in Texas Eastern's favor.

ARGUMENT

I.

THE COMMISSION HAS NOT AUTHORIZED THE SALE OF THE RAYNE FIELD LEASES OR THEIR ACQUISITION BY TEXAS EASTERN; IT HAS MERELY CONSIDERED THE ACQUISITION IN AUTHORIZING TEXAS EASTERN TO CONSTRUCT AND OPERATE OTHER FACILITIES

PSC tells this Court at the outset (Br. 17) that it would not be here "[h]ad the Commission limited its authorization" to Texas Eastern's narrow request for a certificate authorizing it only "to construct and operate pipeline facilities—but not "a certificate to authorize it to acquire these (Rayne Field) leases". Curiously enough, the Commission so limited its authorization and held, in the opinion accompanying the order complained of (R. 3716-3717):

> Texas Eastern has not filed an application for a certificate authorizing the acquisition of the Rayne Field leases and we have no authority to issue such a certificate.

Patently, then, PSC's opening argument should not be read literally. Its subtle meaning rests in PSC's version of the two "practical effects" of the Commission's order (Br. 19). PSC's first charge, that the Commission sanctioned a payment to the assignors ("producers") equivalent to their *realization* from a 22.89-cent per Mcf "conventional gas sale," is totally unfounded. See, *infra*, p. 19, at note 34. More arguable is the second contention, that the Commission has approved a 22.89-cent per Mcf *cost* of gas as a prudent "operating expense" for purposes of making Texas Eastern's rates. Whether PSC acts prematurely

in anticipating a rate case or not, the Commission would hereafter stand on secure ground in deeming these costs to be admissible in a rate case having here found them prudent. See, *infra*, p. 23. But the controversy here really stems from PSC's assumption that the Commission should treat a nonjurisdictional sale of leases as if it were a jurisdictional sale of gas. The reasons for not doing so turn on

potential issues which PSC chose neither to preserve nor to bring before this Court.

A. The Act Does Not Require That Texas Eastern Secure a Certificate Authorizing Acquisition of the Leases

Section (7c) of the Act requires natural-gas companies to secure a certificate of public convenience and necessity before they "acquire" any "facilities" for jurisdictional transportation or sale of natural gas. The Supreme Court, in *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949), held that while even undeveloped leases might be "facilities", they are not "facilities subject to the jurisdiction of the Commission" because Section 1(b) exempts "production or gathering" from the coverage of the Act.[31] It may elsewhere be argued that the subsequent decision in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954),[32] has eroded the *Panhandle* doctrine. Yet PSC has not challenged the Commission's position that Texas Eastern is free to acquire these developed (but hitherto unoperated) leases without certificate authority, and so

[31] "Of course leases are an essential part of production." 337 U.S. at 505. "[T]he transfer of undeveloped gas leases is an activity related to the production and gathering of natural gas and beyond the coverage of the Act". 337 U.S. at 515.

[32] The Court there held that independent producers are "natural-gas companies" subject to regulation under the Act despite the "production or gathering" exemption.

this Court is barred from considering that question *sua sponte*. *F.P.C.* v. *Colorado Interstate Gas Co.*, 348 U.S. 492; *cf. Sunray Mid-Continent Oil Co.* v. *F.P.C.*, No. 335, Oct. Term, 1959, decided June 27, 1960, slip op. p. 19, 28 LW 4584, 4589, at note 22; *Dayton Power and Light Co.* v. *F.P.C.*, 102 AppDC 164, 251 F. 2d 875; *Street* v. *F.P.C.*, — AppDC —, 277 F. 2d 357.

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B. The Act Does Not Require the Assignors to Secure Either Abandonment Permission or Certificate Authority to Sell Their Leases

The abandonment provisions of the Act, Section 7(b), were construed in *Panhandle, supra*. Accepting that decision, no party has suggested that the Rayne field leases could not be freely abandoned. *Panhandle* similarly exempts the sale of leases from the certificate coverage of the Act. Furthermore, Section 7(c) requires natural-gas companies to secure a certificate of public convenience and necessity prior to engaging in any jurisdictional "sale of natural gas". PSC repeatedly speaks of this sale of leases as differing only in "form" from a contract to sell gas produced by the assignors (Br. 2, 8). PSC girdles quotation marks about the adjective "non-jurisdictional" (Br. 15). The fact remains, however, that PSC never asked the Commission to pierce the "form"; it never urged that "sale of natural gas" has a special meaning in Section 7(c), a meaning broader than technical legal parlance ordinarily permits.

Were the Commission required to assert certificate jurisdiction over the assignors' sale then the *CATCO* decision (*Atlantic Refining Co.* v. *Public Service Commission*, 360 U.S. 378) would squarely apply here. For *CATCO* concerns the exercise of the direct certificate power over the implementation of contracts to sell. *CATCO* involves Commis-

sion regulation of the seller, and suggests the specific use of certificate power over the seller as an adjunct to regulating his rates. Here, however, *CATCO* simply stands for the proposition that the "public convenience and necessity" standard, even as applied to the buyer, permits a broad inquiry into all factors involving the public interest, including the cost of this gas to the Texas Eastern system. See, *infra*, pp. 20, 27. The distinction counts. For were we dealing, *arguendo*, with certificate applications by the four assignors the Commission would not end its inquiry with the cost of gas to Texas Eastern. The Commission's ultimate focus (whether in a rate case or a certificate proceed-

ing) would rest upon the assignor's jurisdictional revenues as related to their revenue requirements.[33] Thus the critical unit revenue would be 17.15 cents per Mcf;[34] both

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[33] See *Gulf Oil Corporation*, order issued May 9, 1960, in F.P.C. Docket Nos. G-17973, *et al.* (not yet reported), mimeo. p. 2: "On cross-examination it appeared that the price which the producers were seeking was not related to their revenue requirements, present or future, but represented simply their estimate of the highest price any one of the pipelines might be able to afford in terms of its own consumer market. There is nothing improper or unusual about negotiations on this basis, but it is evident that the prices so arrived at in the present seller's market have little value as an index of the economic conditions of the gas industry or the needs of a particular producer."

[34] Our hypothetical treatment of the sale of leases as a sale of gas seems to call for two adjustments to the 17.15-cent figure before it can validly be compared with prices under genuine contracts to sell: A downward adjustment for the value of the condensate Texas Eastern keeps free and clear after the production payment ceases and an upward adjustment for the value of monies received in advance of production. The record does not go far enough to enable such further calculations to the 17.15 cents—which itself depends on a number of assumptions of record. (PSC's accusation (Br. 19), that the "practical effects" of the instant order are "to confer FPC sanction on a payment to natural gas producers equivalent to what they would realize from a conventional gas sale at 22.89¢ per Mcf", may place an esoteric significance upon "practical effects." Otherwise we are at a loss to fathom its basis in the record.)

the severance tax paid to Louisiana and the return (and related federal tax) which Texas Eastern feels entitled to on its capitalized investment are unrelated to the assignors' revenues. Since the Commission was not in fact regulating the assignors' sales but only considering the prudence of Texas Eastern's investment and the reasonableness of the expense it incurred the only focus was upon the total unit cost to Texas Eastern.

PSC may mean that the lease-sale "form" of doing business does successfully avoid the reach of the Natural Gas Act and should, for that very reason, be defeated where possible by denying Texas Eastern's application to construct a lateral to Rayne field. (Such seems to have been the view of the dissenting commissioner. See PSC Br. 18.) While the Commission has so exercised its certificate

powers under different circumstances,[35] it here found the lease-purchase "form" to have singular advantages for both Texas Eastern's customers and the general gas-consuming public; accordingly it certificated the construction. See, *infra*, pp. 26-7.

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[35] *Transcontinental Gas Pipe Line Corp.*, 21 FPC 138, order set aside *sub nom. Consolidated Edison Co.* v. *F.P.C.*, 271 F. 2d 942 (CA3), petitions for certiorari granted *sub nom. F.P.C.* v. *Trascontinental*, 362 U.S. 948. There a New York electric utility contracted to buy gas in Texas and hired Transcontinental to transport such gas for its account. Only the transportation was subject to Commission certificate jurisdiction. The Commission denied the application because it disapproved of the impact such purchases could have on prices and gas supplies in general.

C. The Commission Properly Considered the Costs of Texas Eastern's Non-Jurisdictional Acquisition as Bearing Upon the "Public Convenience and Necessity" of Texas Eastern's Project

The Commission lacks the certificate power directly to regulate the transaction between Texas Eastern and its assignors. Nonetheless the Commission may take (and has here taken) the acquisition into account in deciding whether to issue a certificate for the construction of jurisdictional facilities without which Texas Eastern cannot utilize the gas it will produce from the leaseholds. For "[i]t is too late in day to contend that the authority of a regulatory commission does not extend to a consideration of public interests which it may not directly regulate and a conditioning of its orders for their protection." *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, 660 (dissent). *Cf. I.C.C.* v. *Railway Labor Executives Assoc.*, 315 U.S. 373; *National Broadcasting Co.* v. *United States*, 319 U.S. 190; *City of Pittsburgh* v. *F.P.C.*, 99 AppDC 113, 237 F. 2d 741; but compare *Consolidated Edison Co.* v. *F.P.C.*, 271 F. 2d 942 (CA3), petitions for certiorari granted *sub nom. F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 362 U.S. 948.

As we understand PSC's argument it would concur in the foregoing paragraph (see PSC Br. 18-19).[36] But it

then argues, in the alternative, (1) that the Commission's tools of analysis inadequately met the issue (our Argument II. A., *infra*, p. 23, answers that contention) and (2) that, rather than mishandle the job of considering Texas Eastern's acquisition costs, the Commission should expressly have deferred the task until some subsequent Texas

[36] Texas Eastern, incidentally, also conceded substantially as much before the Commission.

Eastern rate case. If, as we argue, the Commission need go no further than to investigate Texas Eastern's prudence it seems more desirable to do so now than to try to apply hindsight some months or years hence. On the other hand, assuming, *arguendo*, that the Act requires a probing of the original cost of these leaseholds to the assignors, then such matters can probably still be explored in a rate case in which Texas Eastern attempts to rely on the leasehold costs to it. The entry of certain figures in Texas Eastern's books of account does not control the Commission as to the ultimate accounting to be followed and in any event does not control the disposition of any future rate case.[37] The Commission order here fixed none of Texas Eastern's rates to its customers. The opinion discussed Texas Eastern's costs in response to PSC's own demand that it look into these costs. There is no occasion for this Court to decide whether the Commission should (1) have said nothing or (2) taken more evidence and said more. The only possible question on review is whether the Commission could rationally make the finding of "public convenience and necessity" on the evidence it had.

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[37] The order complained of does not discuss the bookkeeping entries. And the disposition of certain currently pending rate cases may necessitate a reexamination of those accounts. All that has happened here is a determination that the Texas Eastern project is economically feasible even assuming the highest unit cost of gas, that such cost reflects a prudent judgment by Texas Eastern as of the present, and that it represents no hardship to other segments of the public such as justifies defeat of the project.

II

The Commission Could Reasonably Determine That "Public Convenience and Necessity" Required Texas Eastern's Project Without Inquiring Into the Assignors' Original Leasehold Costs

The Commission's opinion reveals the nub of PSC's contention as a demand that the Commission "'require producer [*i.e.*, assignor] disclosure of the costs associated with this gas and their relation to the sale price' of these leases" (R. 3716). The issue cannot be altered by asking whether the evidence demonstrates that the lease acquisition "payments" are "required by the public convenience and necessity"?[38] For the statutory test of "public convenience and necessity" does not postulate the "just and reasonable" standard which governs making or reviewing rates. The rate standard of the Act is found in the provision in Section 4(a) that all natural-gas company rates for "transportation or sale of natural gas subject to the jurisdiction of the Commission * * * shall be just and reasonable * * *." But the standard of "public convenience and necessity" measures the desirability of a company's embarking upon a new project. It is an all-encompassing standard and not to be applied to each individual issue in a proceeding. As the Supreme Court has explained[39] a "public convenience and necessity" test requires the Commission

> * * * to bring to bear upon the problem an expert judgment and to determine from its analysis of the

[38] PSC's second question presented.

[39] *United States* v. *Detroit & Cleveland Navigation Co.*, 326 U.S. 236, 241. See, also, *National Coal Association* v. *F.P.C.*, 89 AppDC 135, 140, 191 F. 2d 462, 467; *Oklahoma Natural Gas Co.* v. *F.P.C.*, 103 AppDC 256, 261, 257 F. 2d 634, 639, certiorari dismissed, 358 U.S. 948.

total situation on which side of the controversy the public interest lies. [Emphasis supplied.]

Thus one cannot speak of a "public convenience and necessity price" (or "rate") as one does of a "just and reasonable rate." To bandy the expression "public convenience

and necessity" about would substitute abstractions for concrete analysis. The cost of acquiring the Rayne leases is part of the "total situation". How should the Commission go about the job of evaluating these costs and their relation to other factors? Where the certificate applicant proposes to make jurisdictional sales under a contract the Commission must remember that the certificate power both supplements the regulation of the seller's rates and tests the buyer's good faith and prudence in entering into the contract. *Atlantic Refining (CATCO), supra*, p. 18. Where, as here, the sale is unregulated the certificate proceeding is an adjunct to regulating the buyer's, Texas Eastern's, business. In both cases the Commission properly considers the impact of the transaction, if consummated, on the industry and public at large. But in the latter instance it does not set out to minimize the seller's profit. As we next show, Texas Eastern, having established its prudence and good faith, was properly issued a certificate.

A. For the Purpose of Regulating Texas Eastern's Rates the Commission May Properly Take Into Account Texas Eastern's Actual Lease Acquisition Costs

The order complained of does not fix any rates which Texas Eastern may charge its customers. It does authorize certain construction, operations, and sales, which will lead Texas Eastern to consummate the lease purchases.

And the record shows Texas Eastern's planned journal entries relating to the costs of these leases. We do not predict the treatment of the lease purchase costs in some future rate case. Bookkeeping entries and accounting analysis do not by themselves control the outcome of rate-making. Nonetheless a summary of the relevant rate principles and issues will scuttle PSC's invocation of "the traditional, familiar 'cost of service' approach" (Br. 24).

Two definitions in the Commission's Uniform System of Accounts for Natural Gas Companies, 18 CFR 201.00-1 *et seq.*, reflect established rate-making principles and suggest the barriers confronting PSC's attempts to go back

to the assignors' ("producers' ") original costs. The Uniform System defines "Cost" as the "amount of money actually paid for property or services". 18 CFR 201.01-10; and "original cost" (as applied to gas plant) as "the cost of such property *to the person first devoting it to public service*", 18 CFR 201.01-29.[40] These definitions, stemming from the Commission's, and the states', public utility regulatory experience reflect a basic approach,[41] which we briefly set forth, to expensed as well as capitalized costs:

1. Payments to affiliated companies are not accepted at face value. The Commission examines the affiliated seller's costs and profits.[42] Texas Eastern, however, is not affiliated with any of the assignors; the Commission found that it had negotiated the lease purchases at arm's length and in good faith.

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[40] Emphasis supplied. See, also, "Instructions—Gas Plants," particularly 18 CFR 201.3-3.

[41] See Barnes, *The Economics of Public Utility Regulation* (1942), 405, 607.

[42] *Colorado Interstate Gas Co.* v. *F.P.C.*, 324 U.S. 581, 606-608; *Home Gas Co.*, 2 FPC 402.

2. The Commission may look behind payments arrived at through arm's-length bargaining between independent concerns where the property purchased has been devoted to public use by the seller. This is so even if the seller's operations were non-jurisdictional. See *Pennsylvania Electric Co.*, 9 FPC 91, 100, affirmed *sub nom. Pennsylvania Electric Co.* v. *F.P.C.*, 188 F. 2d 763 (CA3). But PSC does not suggest that the assignors ever devoted their unoperated Rayne field leases to public use.[43]

3. Other payments, resulting from arm's length bargaining, are accepted at face value if made for property or services which are necessary and proper for the regulated company's business and if reasonable (*i.e.*, not extravagant) in amount.

That a pipeline company needs a gas supply is self-evident; is established as to Texas Eastern in this record; and is liberally conceded by PSC (Br. 20-21). The record similarly contains uncontradicted and convincing evidence of market conditions in the Gulf Coast fields, of intense competition between buyers of gas, and of the inability of Texas Eastern to contract for such a volume of gas unless it was willing to pay such a price (see, pp. 10-11, *supra*). Indeed market conditions had led Texas Eastern previously to contract to pay even a higher unit cost for Rayne field gas.

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[43] We do not mean to suggest that, had Texas Eastern acquired the leases from a company which previously devoted them to public use, Texas Eastern would be limited to the seller's net cost of acquisition and development. There might be significant reasons, in fixing Texas Eastern's rates, to consider (1) how much it would cost to search for gas before discovering and developing the particular reserves and (2) whether Texas Eastern's rates should not reflect something further as costs of some benefit acquired.

Thus the costs to Texas Eastern were reasonably incurred. "Reasonable" here asks what would a prudent businessman in Texas Eastern's position pay for access to such volumes given the market conditions at the time, not whether "reasonable" in the sense of "just and reasonable" under Section 4(a) and *City of Detroit* v. *FPC.*, 97 AppDC 260, 230 F. 2d 810, certiorari denied, 352 U.S. 829. (That standard applies only to jurisdictional sales of gas.) The position of assignors and Texas Eastern here is little different from that of a seller and a buyer of land for pipeline right-of-way, steel pipe, or pipeline compressor pumps.[44] Texas Eastern, as a utility, functions to meet public needs. Commission regulation is designed to assure that utilities operate efficiently and fairly. But the public utility remains a private corporation. The thesis of the Natural Gas Act (and dozens of similar statutes) is that regulated private enterprise, free to make honest business judgments, will bring to the public the benefits of managerial initiative and foresight.

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PSC's attack upon Texas Eastern's managerial prudence assumes, in essence, that the impact of rate regulation under the Natural Gas Act may force market prices below their current level in years to come. Whether the level of gas prices in the field declines depends largely on Commission determinations, as yet unmade, of "just and reasonable" jurisdictional rates. Whether these determinations lead to lower or higher prices, the judgment as to Texas Eastern's prudence cannot be based on hindsight. Texas Eastern's customers need the gas now. Texas Eastern had to decide whether buying the leases made sense in

[44] Following PSC's theory would require the Commission to determine whether the compressor manufacturer's price for his product was commensurate with its costs.

terms of the present. Its decision must be evaluated and its prudence judged (either now or later) in terms of market conditions when the purchase is finally consummated.[45]

B. For the Purpose of Determining Texas Eastern's Certificate Application the Commission Properly Considered the Public Interest in a Leasehold Transaction Which Avoids Commission Jurisdiction Over the Assignors

The Commission realized that by the device of selling their leases the assignors escaped regulation of their revenue from Rayne field. Yet the Commission found the benefits inherent in Texas Eastern's owning part of its own gas supply to overbalance any argument in favor of effectively outlawing such transactions. We add but two comments to the Commission's findings (*supra*, p. 13) and the supporting testimony (*supra*, pp. 9-10). First, the Commission looked beyond the narrow interests of Texas Eastern and the particular consumers served by that system. It also considered the weal of other consumers and therefore applauded the fact that a sale of leases cannot

increase anybody else's cost of gas by "triggering" the "favored-nation" clauses in any other pipeline's contracts. Second, this Court is already familiar with the Commis-

[45] See Barnes, *The Economics of Public Utility Regulation* (1942), 607: "In the regulation of operating expenses, as in other phases of commission control, there is a need of standards or tests of the reasonableness of the sums which the companies claim as necessary expenditures. As the basic principle, there is the requirement that the utility have competent and efficient management, that the owners be responsible for providing honest and efficient management, and that consumers must not be prejudiced by any deficiency in management. It is generally agreed that honesty and efficiency are to be judged in the light of the data available at the time when managerial decisions are reached."

sion's view that ownership by pipeline companies of their own producing facilities serves the public interest. *City of Detroit* v. *F.P.C.*, 97 AppDC 260, 267, 230 F. 2d 810, 817, certiorari denied, 352 U.S. 829. This Court did there set aside the Commission's rate order. But the rationale was that, even if the Commission may consider such a policy in making rates, it may not increase rates so as to encourage a pipeline to engage in production until it has assured itself that a particular increase is the lowest necessary for that purpose. Only the "just and reasonable" rate standard of Section 4(a) was involved in *City of Detroit*. And this Court, interpreting the decision in *F.P.C.* v. *Hope Natural Gas Co.*, 320 U.S. 591, rather narrowly confined the Commission to using "cost of service" principles as the "anchor" or point of departure for the regulation of jurisdictional rates. In *City of Detroit* itself, however, this Court had occasion to note the Commission's broader powers under Section 7, the certificate section, to encourage or discourage the particular course which gas company management seeks to steer. 97 AppDC 267, 230 F. 2d 817, at note 10. Cf. *City of Pittsburgh, supra,* 99 AppDC at 123, 237 F. 2d at 751, note 28. Here the Commission's certification will encourage Texas Eastern in securing to the public the benefits of partially owning its own reserves. PSC is dissatisfied with other consequences of the Commission's action. So it asks the Court to reach a contrary conclusion and to substitute its judgment for that of the Commission. But this is in the area which is peculiarly the Commission's, for such consequences are elements of "the public interest" and the Act makes the Commission the arbiter of the paramount public interest. *United States* v. *Pierce Auto Freight Lines*, 327 U.S. 515, 535-6.

CONCLUSION

For the foregoing reasons, the order of the Federal Power Commission should be affirmed.

Respectfully submitted,

WILLARD W. GATCHELL,
General Counsel,

HOWARD E. WAHRENBROCK,
Solicitor,

ROBERT L. RUSSELL,
Assistant General Counsel,

DAVID J. BARDIN, *Attorney,*
For respondent.

Federal Power Commission
Washington 25, D. C.

July 11, 1960

[Appendix 3 to Continental Oil Company's Application, consisting of the Judgment and Opinion of the Court of Appeals for the District of Columbia dated December 8, 1961, is not printed at this point in the Joint Appendix since it appears, *supra*, at R. 4038-4044 (J.A. 862-68)].

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docketed May 1, 1963

	Docket Nos.
TEXAS EASTERN TRANSMISSION CORPORATION	G-12446, G-12447
CONTINENTAL OIL COMPANY	G-12432

Application By Texas Eastern Transmission Corporation for Rehearing of Order Issued April 2, 1963

NOW COMES Texas Eastern Transmission Corporation (Texas Eastern), pursuant to Section 1.34 of the Commission's Rules of Practice and Procedure and Section 19(a) of the Natural Gas Act, and files this its Application for Rehearing complaining of the Commission's order issued April 2, 1963, in the above captioned proceeding, and, as grounds for this Application for Rehearing, states as follows:

1.

On March 8, 1963, Texas Eastern filed an Application for Rehearing of the Commission's Opinion No. 378 and order issued February 6, 1963, in the above captioned proceeding. The Commission's order issued herein on April 2, 1963, although entitled "Order Granting Applications for Rehearing" does not grant to Texas Eastern any of the relief prayed for in said Application for Rehearing. Quite the contrary, the order of April 2, 1963, in effect rejects all of the grounds and specifications of error relied upon by Texas Eastern in its Application for Rehearing.

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2.

Although the Commission's order of April 2, 1963, provides for the possibility of a further evidentiary hearing

for Continental Oil Company, Sun Oil Company, General Crude Oil Company and M. H. Marr, said order does not provide for the possibility of any further evidentiary hearing for Texas Eastern or any reconsideration, abrogation or modification of the Commission's Opinion No. 378 on the basis of the existing record. Texas Eastern has not requested, and does not desire, any further evidentiary hearing in this proceeding and is aggrieved by the Commission's order of April 2, 1963, which has the effect of denying Texas Eastern's Application for Rehearing of Opinion No. 378 and order issued February 6, 1963, on the basis of the existing record.

3.

The Commission's order of April 2, 1963, is erroneous and should be set aside for each of the reasons, grounds, and specifications of error set forth in Texas Eastern's Application for Rehearing of Opinion No. 378 and order issued February 6, 1963, which is hereby incorporated herein by reference.

WHEREFORE, Texas Eastern respectfully prays:

(1) That a rehearing be granted with reference to the Commission's order issued herein on April 2, 1963;

(2) That on said rehearing the Commission withdraw said

order issued April 2, 1963; and the Commission's Opinion No. 378 and order issued February 6, 1963, and issue a new opinion and order finding that the acquisition cost of the Rayne Field is consistent with the public convenience and necessity and reissuing to Texas Eastern the certificate of public convenience and necessity heretofore issued by the Com-

mission's Opinion No. 322 and order of June 23, 1959, in these proceedings; and

(3) That Texas Eastern have such other and further relief as may appear to the Commission to be just and proper.

Respectfully submitted,

JACK D. HEAD
Jack D. Head
Vice President and General Counsel
Texas Eastern Transmission Corporation
P. O. Box 2521
Houston 1, Texas

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Of Counsel:

W. D. Deakins, Jr., Esquire
Vinson, Elkins, Weems & Searls
First City National Bank Building
Houston 2, Texas

Keith M. Pyburn, Esquire
Texas Eastern Transmission Corporation
Suite 852, Pennsylvania Building
Washington 4, D. C.

Joseph F. Weiler, Esquire
Texas Eastern Transmission Corporation
P. O. Box 2521
Houston 1, Texas

Martin L. Friedman, Esquire
Chapman and Friedman
932 Pennsylvania Building
Washington 4, D. C.

Dated: April 30, 1963.

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Docketed May 1, 1963

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Joseph C. Swidler, Chairman; Howard Morgan, L. J. O'Connor, Jr., Charles R. Ross, and Harold C. Woodward.

Texas Eastern Transmission Corporation, *et al*,

Docket Nos. G-12446, *et al.*

Order Permitting Intervention, Granting Application for Rehearing and Denying Stay

(Issued May 1, 1963)

Applications to intervene and, in the alternative, for rehearing and stay have been filed by H. E. Dishman (Petitioner), with respect to our Opinion No. 378 and Order issued February 6, 1963. In our opinion we found that we had jurisdiction over certain conveyances[1] of gas leasehold interests to Texas Eastern Transmission Corporation (Texas Eastern). Petitioner had made such conveyances.

Petitioner, an individual independent operator, on July 27, 1959 conveyed to Texas Eastern, represented by its subsidiary, the Louisiana Gas Corporation, certain gas interests in petroleum and other mineral leaseholds in the Rayne Field in Louisiana.

Petitioner seeks to intervene on the ground that his interests, as conveyor, holder of securities and mortgage lienholder of gas leasehold interests now held by Texas Eastern in the Rayne Field, are affected by our Opinion No.

[1] Conveyances made by Continental Oil Company, Sun Oil Company, General Crude Oil Company and M. H. Marr.

378 and his rights not adquately represented by existing parties. Petitioner declares that, relying on Commission and court opinions, he had no notice, and was without legal or factual reasons to be on notice, that the Commission would in these proceedings set aside the lease sale arrangement. As stated in our order of April 2, 1963, we find no merit in the contention that the jurisdictional question on the leasehold acquisitions was not argued and at issue in the remanded proceedings. However, due to the complicated procedual situation, recognized in Opinion

No. 378, and the fact that the issue was barely considered and given but passing mention in the earlier phase of these proceedings, and due to the lack of any treatment of petitioner as a party to the proceedings, we shall grant his petition to intervene.

Petitioner made his petition for rehearing in the alternative because of uncertainty as to his status as a party. This question becomes moot upon our grant of his petition to intervene. Before making further disposition of these proceedings, in order to give petitioner an opportunity to be heard on the issues he has raised, we shall grant his application for rehearing, but subject to procedures similar to those imposed in our order of April 2, 1963. In order to discover if a proper disposition of this matter requires a further evidentiary hearing, we shall require that petitioner file within 30 days of this order a pleading setting forth the nature of evidence he proposes to submit and what he intends to prove thereby on the issues raised by his petition for rehearing. These issues are: (1) whether we have jurisdiction over the gas leases involved, (2) or over the transfer of these leaseholds, (3) whether we have jurisdiction to order Petitioner or Continental, if it is still to be considered his representative herein, to file rate schedules and appli-

cations for certificates, and (4) whether we have jurisdiction to order Texas Eastern to put into effect a new arrangement for the supply of gas to it, in conformity with Opinion No. 378 and as required by paragraph (B) of the order.

The Commission further finds:

It is in the public interest that the applications for intervention and rehearing filed by H. E. Dishman be granted, subject to the procedures discussed above and set forth below in order paragraph (B). The application for stay pending judicial review is denied.

The Commission orders:

(A) The application for intervention and rehearing filed by H. E. Dishman are hereby granted, but subject to the procedures discussed above and set forth below in paragraph (B).

(B) If H. E. Dishman desires a further evidentiary hearing, he shall notify the commission within 30 days of the issuance of this order setting forth the nature of the evidence he proposes to introduce and wha the intends to prove thereby. The evidence shall be confined to the following

issues: (1) whether the Commission has jurisdiction over the gas leases involved in these proceedings, (2) whether the Commission has jurisdiction over the transfer of the gas leases involved herein, (3) whether the Commission has jurisdiction to order Petitioner, or Continental, if it is still to be considered his representative herein, to file rate schedules and applications for certificates, (4) whether we have jurisdiction to order Texas Eastern to put into effect a new arrangement for the supply of gas to it from the Rayne in paragraph (B) of the order, (5) whether the lease sale arrangement herein is in the public interest, and (6)

whether it may be rescinded and another arrangement substituted.

(C) The petition for staying pending judicial review is denied.

By the Commission.

J. H. GUTRIDE
Joseph H. Gutride
Secretary

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Texas Eastern Transmission Corporation
Docket Nos. G-12446 and G-12447

Continental Oil Company
Docket No. G-12432

May 14, 1963

M. H. Marr
c/o Donley C. Wertz, Esq.
2500 Republic National Bank Building
Dallas, Texas

Dear Mr. Marr:

Reference is made to the "application for rehearing" tendered for filing on April 15, 1963, in the above-designated matters. The "application" is not addressed to a final order and as such is not acceptable for filing. It will be processed as a motion for reconsideration of the Commission's order issued April 2, 1963, and you will be advised of the Commission's action thereon.

The acceptance of the tendered "application for rehearing" as a motion for reconsideration should not be construed that the 30-day provision of Section 19 (b) of the

Natural Gas Act as implemented by 1.34 (c) of the Commission's Rules of Practice and Procedure, will apply to the motion.

Very truly yours,

J. H. GUTRIDE
Secretary

cc: May, Shannon and Morley
1700 K Street, N. W.
Washington 6, D. C.

SEC
Gutride, J. H. :mjc
5-14-63

Similar letter to the following:

Sun Oil Company, c/o Robert E. May, May, Shannon and Morley
1700 K Street, N. W.
Washington 6, D. C.

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General Crude Oil Company
c/o Leon M. Payne, Esq.
Andrews, Kurth, Campbell & Jones
25th Floor Humble Building
Houston 2, Texas

Continental Oil Company
c/o Lloyd F. Thanhouser, Esq.
P. O. Box 2197
Houston 1, Texas

Jack D. Head, Vice President and General Counsel
Texas Eastern Transmission Corporation
P. O. Box 2521
Houston 1, Texas

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UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Docket Nos. G-12446, G-12447
Texas Eastern Transmission Corporation

Docket No. G-12432
Continental Oil Company

Opinion No. 378-A

Opinion and Order on Rehearing

Issued: July 12, 1963

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This Opinion and Order relates to the merits of applications for rehearing by Texas Eastern Transmission Corporation, Continental Oil Company, Sun Oil Company, General Crude Oil Company and M. H. Marr, as well as by intervener H. E. Dishman, filed with respect to our Opinion No. 378 and Order issued February 6, 1963. In Opinion No. 378 we found that the transaction by which the producers conveyed their leasehold interests in the Rayne Field to Texas Eastern was a sale for resale in interstate commerce subject to our jurisdiction. We therefore deferred decision on Texas Eastern's certificate application until the company and the producers should enter into a new arrangement and make appropriate filings.

In their applications for rehearing Continental and Marr contended that they did not have proper notice that the jurisdictional question was to be considered and were denied due process. We granted rehearing by order of April 2, 1963, which specified that the producers should notify the Commission within thirty days thereafter if they desired to present evidence on the jurisdictional question. On March 6, 1963, H. E. Dishman, a minority lease-

holder in the Rayne Field, had petitioned for intervention or in the alternative for rehearing and stay, and by order of May 1, 1963, we permitted him to intervene, granted rehearing with provision for notifying the Commission within thirty days if he wanted to present evidence and denied his request for a stay of the Commission's Opinion No. 378 and Order pending judicial review.

Continental, General Crude, Sun, Marr, and Texas Eastern have filed applications for rehearing of our April 2, 1963 order granting rehearing and have rejected any opportunity to present further evidence.[1]

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Within the thirty-day period specified in the May 1, 1963 order, Dishman has filed no request to present further evidence. By letters of May 14, 1963, the Secretary of this Commission stated to each of the five applicants for rehearing that the application was not addressed to a final order and as such was not acceptable for filing, but would be processed as a motion for reconsideration of the April 2, 1963 order. While it is now clear that no additional evidentiary hearing is desired by the parties, the issues raised in the original applications for rehearing supplemented by the second round of applications for rehearing are still before us for disposition.

In our Opinion No. 378 we discussed at length the principal issue here, namely our jurisdiction over the transfer of gas leases by the producers to Texas Eastern. We see no need to repeat our discussion of this basic issue. The quick answer to the producers' additional argument that under the law of Louisiana there is no such thing as a sale of gas in place is that we are interpreting and applying the Natural Gas Act, not state law.

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[1] The applications of Continental and General Crude contain statements that could be classified as scurrilous. Section 1.15 (f) of our Rules of Practice and Procedure.

Some of the producers also argue that the Internal Revevue Service treatment of the transaction as a capital gain is conclusive and binding upon us. Here again the producers rely on an entirely different statute with different purposes. In *Colorado Interstate Gas Co.* v. *F.P.C.*, 209 F. 2d 717, 727 (CA10), reversed on other grounds 348 U.S. 492, we were upheld in using a value for depletion at variance with one fixed by the Internal Revenue Service. In support of their contention the producers cite *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381. In that case the Bituminous Coal Commission had determined that the Sunshine Company's coal was bituminous and was not exempt under the Bituminous Coal Act which included provisions for taxation (50 Stat. 72). This determination was affirmed by the Court of Appeals. In a suit to enjoin collection of the tax on bituminous coal the Court held the question of the nature of the coal had already been determined. However, this case is distinguishable from the present case, for the taxing provision was in the Bituminous Coal Act and the Bituminous Coal Commission was given authority to determine who was exempt from the Act and hence exempt from the tax.

The producers again cite *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, in support of their position, but fail to appreciate the significance of the fact that contrary to the situation in the *Panhandle* case the leases in this case were transferred to a pipeline which intended to transport the gas in interstate commerce. The lease transfer transaction, however designated and under whatever provisions of local law, was a means by which the producers were paid for their gas by a pipeline which transported the gas and delivered it to buyers in other states.[2]

[2] There are several other matters relating to the jurisdictional problem that deserve comment. We had stated (mimeo p. 8, lines 3-6) that the seller retained management of the field. We did not mean all sellers but only Continental as explained previously (mimeo p. 7, paragraph (4)).

(Contd.)

[2] (Contd.)

We agree with General Crude that in the *Panhandle* case (337 U.S. at p. 500) the seller of the gas reserves, Panhandle retained an interest in the reserves sold, namely an option to purchase the gas. However, the most important distinction between this case and *Panhandle* remains, for here the sale was made in order to supply the interstate market.

Several of the producers contend that we were incorrect in using 79 percent and 81.5 percent as representing Texas Eastern's original and later interest in the Rayne Field reserves. They argue that the total interest assigned was around 95 percent subject to royalties. This is true enough, but we recognized the distinction between Texas Eastern's own interest and the royalty interest. While the producers argue that there is no royalty gas owned as such, Texas Eastern's vice president referred to Texas Eastern's own gas and the royalty gas as separate and subject to different methods of payment (Tr. 1930). Thus, irrespective of state law, the purchaser thought in terms of buying gas, not merely a leasehold interest.

The producers also point out that for the purposes of the present arrangement Texas Eastern bought and operates a gathering system and central dehydration facilities. With respect to the leasehold transaction they add that instead of 16 promissory notes, there were 16 for each seller. Neither of these corrections we think is material or would change our view of the transaction.

Arguing that the question of jurisdiction has already been settled, Continental cites several cases where a prior determination of a question has been held controlling. These include *Morand Bros. Beverage Co.* v. *N.L.R.B.*, 204 F. 2d 529 (CA7), certiorari denied 346 U.S. 909, where on remand of a proceeding the Board expressed its disagreement with the court's view of the law on lock-out of employees during a strike, *International Union* v. *Eagle Picher M. & S. Co.*, 325 U.S. 335, where the Board attempted to change its order with respect to a back-pay formula after the Court of Appeals had held [3] the Board's order should be enforced with minor modifications, and *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320, where the state of Washington argued that the city could not condemn property although this question had already been settled in

[3] *Eagle-Picher M. & S. Co.* v. *N.L.R.B.*, 119 F. 2d 903 (CA8).

favor of the city on appeal from this Commission's order granting a license (*State of Washington Dept. of Comm.* v. *F.P.C.*, 207 F. 2d 391, 396 (CA9), certiorari denied 347 U.S. 936). None of these cases involved, as did this one, questions of the basic jurisdiction of the agency over a particular type of transaction. It is a well-known principle that the question of jurisdiction,

that is the competency of the administrative agency to act upon the subject matter, is always open for judicial determination. *Borax Ltd.* v. *Los Angeles*, 296 U. S. 10, 18. This principle has also been applied to reconsideration of jurisdictional questions by administrative agencies where the equities involved so required. See *Davis, Administrative Law* (1958), § 18.07. Moreover in each of the above cases the original holding apparently was fully considered by the court and involved an important issue in the case. In the present case the question of jurisdiction was not in issue and, as the opinions make clear, received little attention. The court found that the Commission in granting a certificate to Texas Eastern had appeared to confer general approval on the pricing aspects of the gas lease acquisitions without sufficient support in the record. The question of jurisdiction over the producers' disposition of the gas was not an issue to be decided, and neither the New York Commission nor any other party contended that this Commission had jurisdiction, or argued any of the considerations in support of such jurisdiction. The two short allusions of the court to the jurisdictional question merely put the quite different problem which was presented for its decision in context. The court itself recognized they were not necessary to the decision stating "[I]t is of no importance here that the transactions by which Texas Eastern proposed to acquire the gas will themselves be, by virtue of a change in form, beyond the regulatory con-

trol of the Commission," since the pipeline's construction project was within the Commission's jurisdiction and the Commission was warranted in inquiring into Texas Eastern's costs "regardless of the status of the seller."[4] The question of jurisdiction has now been raised; we find the question of importance to the execution of our regulatory functions as explained in our Opinion No. 378; and we are of the opinion that it was properly considered.

The producers and Texas Eastern contend that we should not and do not have power to require them to rescind the lease sale arrangement. In our opinion No. 378 we have already discussed why we consider that it is not in the public interest for the Commission to certificate this transaction; it is not necessary to discuss the extent of our power to reform contracts under the Natural Gas Act, for we did not attempt to do so here. In our Opinion No. 378 we required that the producers, Continental, Sun, Marr and General Crude within six months of the issuance of this order make filings of appropriate rate schedules and applications for certificates of public convenience and necessity, and required Texas Eastern to file a revised application for a certificate within the same period. By this we intended to give the parties further opportunity to obtain certificates in these proceedings for a sale of gas which they have consummated at least in part. Without such revised filings we would be

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constrained to deny certificates, and, in such case, the parties would be in the position of being in violation of the Natural Gas Act. We did not intend to order the parties to execute a particular kind of contract, or any contract, apart from the necessity of completing the present proceedings. In order to make our meaning clearer we shall revise our finding (7) and ordering clause (B) as

[4] *P.S.C. of New York v. F.P.C.*, 287 F. 2d at page 146.

shown below. In doing so we shall provide that ordering clause (B) apply to Dishman and any other Rayne Field producers who have entered into lease sale arrangements with Texas Eastern.

Certain of the producers have requested a stay of our Opinion and order. In view of the fact that court proceedings are already in progress, we shall grant such a stay as provided in revised ordering clause (B) below.

The Commission finds:

The applications for rehearing filed by Continental, Sun, Marr, General Crude, Texas Eastern and Dishman present no new facts or principles of law which were not considered by the Commission when it issued its Opinion No. 378 on February 6, 1963, or which having now been considered warrant any change or modification of said order except as stated in our orders of April 2, 1963 and May 1, 1963 or as specified in this Opinion No. 378A and Order.

The Commission orders:

(A) Our Opinion No. 378 and Order issued February 6, 1963 is hereby confirmed as the order of the Commission except as modified by our orders issued April 2, 1963 and by this Opinion No. 378-A and Order, and the motions for reconsideration filed by Continental, General Crude, Sun, Marr, and Texas Eastern are hereby denied.

(B) Finding clause (7) in our Opinion No. 378 and Order issued February 6, 1963 is amended to read as follows:

> (7) It is appropriate in the administration of the Natural Gas Act that decision on Texas Eastern's application for a certificate of public convenience and necessity be deferred and that opportunity be afforded for further filings on the part of Texas Eastern and its suppliers of gas.

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(C) Ordering clause (B) in our Opinion No. 378 and Order issued February 6, 1963 is amended to read as follows:

(B) Continental, Sun, Marr, General Crude, Dishman and any other Rayne Field producers who have transferred gas leases to Texas Eastern are granted opportunity to make filings of appropriate rate schedules and applications for certificates of public convenience and necessity until six months after the issuance of final mandate upon the completion of court review proceedings herein, and in the same period Texas Eastern may file a revised application for a certificate to put into effect any new arrangement for supply of gas to Texas Eastern from the Rayne Field in conformity with this opinion, the public interest and the Natural Gas Act.

By the Commission, Commissioner Woodward dissenting, filed a separate statement.

/s/ J. H. Gutride
Joseph H. Gutride,
Secretary.

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Woodward, Commissioner dissenting:

On February 6, 1963 when the original Opinion issued in this proceeding, I did not participate but now that the matter is before us on a Petition For Rehearing, I would prefer to make my views known by issuing the following dissent:

Prior to February 6, 1963, this Commission consistently recognized its unqualified lack of jurisdiction over the sale, purchase or transfer of leasehold interests by natural gas companies. The Supreme Court of the United States,

at the conclusion of its opinion in *Federal Power Commission* vs. *Panhandle Eastern Pipeline Co.*, 337 U.S. at pp. 515-516 (1949) told the Commission what it could do if it wished to obtain such authority:

> "If the Commission is of the opinion that it should have power to control the disposition of leases by natural gas companies, it is authorized to call the attention of Congress to that fact."

In its annual reports to Congress for the past twelve years, the Commission has advocated an amendment to Section 7 of the Natural Gas Act which would vest it with jurisdiction over transfer of leaseholds by natural gas companies.[1] In spite of these pleas in each instance the Congress has not acted to confer upon this Commission the power which, clearly, it does not presently possess. In this proceeding, the Commission commits grave error in attempting to exercise jurisdiction in areas forbidden to it by the Congress and the Supreme Court of the United States. To attain its objective, the Commission is now saying that any sale of property which contains gas in formation is subject to its jurisdiction. Without question, this is an unlawful assumption of jurisdiction.

"Great weight" must be given to an agency's consistent interpretation of the law it administers, especially where the agency has sought to have the law amended, but Congress has declined to do so and has thereby acquiesced in the agency's historical interpretation.[2]

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[1] 31. FPC Ann. Rep. 145 (1951); 32 FPC Ann. Rep. 152 (1952); 33 FPC Ann. Rep. 125 (1953); 34 FPC Ann. Rep. 170 (1953); 35 FPC Ann. Rep. 182 (1955); 36 FPC Ann. Rep. 19 (1956); 37 FPC Ann. Rep. 25 (1957); 38 FPC Ann. Rep. 18. (1958); 39 FPC Ann. Rep. 21 (1959); 40 FPC Ann. Rep. 19 (1960); 41 FPC Ann. Rep. 3 (1961); 42 FPC Ann. Rep. 14 (1962).

[2] *United States* v. *Bergh*, 352 U.S. 40, 47 (1956); *Gas Service Company* v. *Federal Power Commission*, 282 F. 2d 496, 499 (D.C. Cir. 1960); *Mississippi Valley Gas Co.* v. *Federal Power Commission*, 294 F. 2d 588, 592 (5th Cir. 1961).

The Commission's assertion of jurisdictional authority over the sale of leasehold rights in Rayne Field, on the basis of an unsupported vague and obscure dissertation, is a complete reversal of its prior position in these proceedings. At no time did the Commission so much as infer that it might possess or exercise jurisdiction over the Rayne Field leaseholds. Opinion 322, issued June 23, 1959, granted Texas Eastern's application for certification and the Commission explicitly declared (mimeo pp. 5-6; 21 F.P.C. 860 at p. 864):

> "Texas Eastern has not filed an application for a certificate authorizing acquisition of the Rayne Field leases and *we have no authority to issue such a certificate.* (Emphasis supplied)."

The Public Service Commission of the State of New York appealed Opinion 322 before the U. S. Court of Appeals for the District of Columbia Circuit. In its brief, the Commission affirmed its position that it lacked jurisdiction over the Rayne Field leasehold sale stating:

> "The Commission order does not authorize the purchase of lease—*undisputably such authorization is outside its jurisdiction* (infra, p. 17, emphasis supplied)."

The Court of Appeals disposed of the New York Commission appeal by holding (287 F. 2d at pp. 145, 146):

> "It is of no importance here that the transaction by which Texas Eastern proposes to acquire gas will themselves be, by virtue of the change in form, beyond the regulatory control of the Commission."

In my judgment, that opinion conclusively settled the jurisdictional question. The leasehold sale was not a sale in

interstate commerce; it affected only rights and interests in real property located wholly within the State of Louisiana. Any other conclusion disparages the Court of Appeals adjudication—this fact is indisputable. If permitted, this Commission's course of action would destroy the rights of parties to court review and render the decision of the courts meaningless.

Apart from its misapplication of the statute, the majority errs in attempting to force the parties herein to revise their contracts. The Natural Gas Act is the only source of this Commission's authority and there is nothing in the Act which confers such absolute power on the Commission. The majority cannot, by decree, force a meeting of the minds of the parties here involved.

Moreover, in a Section 7 proceeding, the Commission must make findings, in accordance with the statute, of present or future, rather than past, public convenience and necessity, *City of Pittsburgh* v. *FPC*, 237 F. 2d 741, 752; *Panhandle Eastern Pipeline Co.*, v. *FPC*, 236 F. 2d 289, 292. Here, the Commission's attempt to impart retroactive effect to its findings is totally invalid.

Rehearing should be granted and Opinion No. 378 and Order, issued February 6, 1963, should be reversed and set aside.

/s/ HAROLD C. WOODWARD
Harold C. Woodward
Commissioner

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BEFORE THE FEDERAL POWER COMMISSION

In the Matters of

Docket Nos. G-12446, G-12447

Texas Eastern Transmission Corporation

Docket No. G-12432

Continental Oil Company

Docketed July 25, 1963

Application for Rehearing by Sun Oil Company

Comes now Sun Oil Company ("Sun") and, pursuant to the provisions of Section 19(a) of the National Gas Act and Section 1.34 of the Commission's Rules of Practice and procedure, being aggrieved, hereby applies for rehearing of the Commission's Opinion No. 378-A in the above-entitled proceedings, issued on July 12, 1963 and of Opinion No. 378, issued February 6, 1963 as modified by the Commission's orders issued April 2, 1963 and May 1, 1963 and by Opinion No. 378-A. In support of this aplication for rehearing, Sun states as follows:

I.

In Opinion No. 378-A, entitl ed "Opinion and Order on Rehearing" the Commission (Commissioner Woodward dissenting) has reiterated and reaffirmed the unlawful asumption of jurisdiction over the assignment and conveyance by Sun of gas leasehold located in the Rayne Field, Acadia Parish,

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Louisiana, to Louisiana Gas Corporation, an affiliate of Texas Eastern Transmission Corporation ("Texas Eastern"), which the Commission had previously asserted in

Opinion No. 378 and in its order issued April 2, 1963. In reaffirming this erroneous finding and conclusion the Commission has, in Opinion No. 378-A, advanced additional legally untenable positions and arguments in an attempt to justify its unlawful assertion of jurisdiction and Sun therefore applies for rehearing of this latest Opinion and Order.

II.

In the first complete paragraph on page 2 of its Opinion No. 378-A the Commission states that it sees "no need to repeat" its discussions of the jurisdictional issue but then asserts that the "quick answer to the producers' additional argument that under the law of Louisiana there is no such thing as a sale of gas in place is that we are interpreting and applying the Natural Gas Act, not state law." In this summary and superficial fashion the Commission attempts to deal with the valid legal objection which Sun registered in its aplication for rehearing of Opinion No. 378, to the Commission's inaccurate, misleading and illegal characterization of this transaction as an "in-place sale of the Rayne Field gas to Texas Eastern." The Commission does not even attempt to dispute the fact, as stated in Sun's

application for rehearing, that under Louisiana law there is no legally recognizable sale of gas in place; that one may only own the land or the right to produce minerals therefrom or may own gas after severance by production; and that no one can own, or sell, gas in place in Louisiana. This invalid "in place" characterization by the Commission, as well as its equally invalid "in bulk" terminology employed in its Opinion No. 378, were obviously purposely used to convey the erroneous impression that the sale of gas leases involved was tantamount to a "wholesale" sale and thus within the Commission's jurisdiction. This distorted char-

acterization and interpretation of the nature of the transaction is as invalid under the National Gas Act as it is under Louisiana law, and the Commission may not legally change its essential nature on the premise that it is "interpreting and applying the Natural Gas Act, not state law."

III.

In Opinion No. 378-A the Commission attempts to refute Sun's claim of error because the Commission disregarded the determination and ruling of the Internal Revenue Service that the sales in the form described in the lease Sale Agreement were of leasehold rights subject to tax treatment as capital gains rather than sales of gas subject to treatment as normal income. The Commission's citation

of the case of *Colorado Interstate Gas Co.* v. *F.P.C.*, 209 F. 2d 717, 727, in an attempt to support its disregard of the ruling of the Internal Revenue Service is entirely misplaced as that case does not constitute a valid precedent for the Commission's action here. As the Court pointed out in that case, the Internal Revenue Service's action there involved was adopted "for another purpose and at another time" that is, it was "adopted six years before." On the contrary, in this case, the ruling of the Internal Revenue Service was obtained in connection with and was part and parcel of the same transaction. As a matter of fact, obtaining the ruling was a condition attached to the consummation of the transaction itself. The Commission's further attempt to distinguish the case of *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381, is equally invalid. In that case the Supreme Court, among other things, stated that there "is privity between officers of the same government" and that "the principles of res judicata apply to questions of jurisdiction as well as to other matters—whether it be

jurisdiction of the subject matter or of the parties." These principles are applicable here.

IV.

In the last complete paragraph on page 2 of Opinion No. 378-A the Commission again makes a vain and

futile effort to distinguish the Supreme Court's decision in *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, this time on the primary and apparently the sole ground "that contrary to the situation in the *Panhandle* case the leases in this case were transferred to a pipeline which intended to transport the gas in interstate commerce." Again, in footnote 2 on page 3 of Opinion No. 378-A the Commission abandons its other unsuccessful attempts to distinguish the *Panhandle* case, previously attempted in Opinion No. 378 and states "However, the most important distinction between this case and *Panhandle* remains, for here the sale was made in order to supply the interstate market." The Commission's total disregard of the limitations upon its jurisdiction contained in the Natural Gas Act and its failure and refusal to recognize any such limitations is clearly evident from its language on page 2 of Opinion No. 378-A where it states:

> ". . . The lease transfer transaction, however designated and under whatever provisions of local law, was a means by which the producers were paid for their gas by a pipeline which transported the gas and delivered it to buyers in other states."

Under the foregoing language, the Commission has asserted unlimited jurisdiction and authority over any means by which the owners of properties capable of producing gas are paid for the sale of such properties, provided only that the gas subsequently produced from such properties

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moves in interstate commerce. In the first place, the use of the term "producers" to describe the parties who sold and conveyed the leases to Texas Eastern in this transaction is incorrect and misleading. Texas Eastern alone was and is the "producer" of gas from the leases which were sold and conveyed to it by this transaction. In the second place, the broad assertion of jurisdiction by the Commission is wholly illegal and disregards and repudiates the limitations upon its jurisdiction heretofore repeatedly recognized by the Commission itself and the courts. In direct refutation of the Commission's attempt here to expand its jurisdiction beyond that conferred by the Natural Gas Act, and contrary to the Commission's futile effort to distinguish the *Panhandle* case on the ground that the gas to be produced from the leases there involved was to move intrastate instead of interstate, the Supreme Court's decision in the *Panhandle* case was predicated upon the absence of jurisdiction over gas leases because they are production facilities and the transfer of such gas leases involves a production activity over which the Commission has no jurisdiction. Specifically, the Supreme Court did not base its decision upon the circumstances that the gas involved in the *Panhandle* case was to move intrastate instead of interstate, and the Commission's attempt to distinguish the case on that ground is without any foundation whatsoever.

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In footnote 2, on pages 2 and 3 of Opinion No. 378-A the Commission retreats somewhat from several of its erroneous statements and conclusions in Opinion No. 378 which were pointed out in Sun's previous applications for hearing. However, the Commission characterizes these corrections as not "material" or would not "change our view of the transaction." This attitude of the Commission

serves to emphasize that it is determined to assert jurisdiction over this transaction, irrespective of any misunderstandings it may have had of the factual situation and that it has repeatedly shifted its grounds for asserting jurisdiction, all in defiance of previous Commission and Court precedent to the contrary.

V.

On pages 3 and 4 of Opinion No. 378-A the Commission attempts to avoid its own previous holding that it lacks jurisdiction in this case over the transfer of gas leases involved, and the affirmance of this lack of jurisdiction by the Court of Appeals for the District of Columbia Circuit, by misplaced reliance upon statements such as it "is a well-known principle that the question of jurisdiction, that is the competency of the administrative agency to act upon the subject matter, is always open for judicial determination." In support of this statement, the Commission cites *Borax,*

Ltd. v. *Los Angeles,* 296 U.S. 10, 18. The misuse of this case for the purpose stated is apparent. On the page reference given by the Commission the Supreme Court did not use the language attributed to it, namely, that the question of jurisdiction "is always *open* for judicial determination." On the contrary, the Court stated "the principle that the question of jurisdiction, that is, of the competency of the Department to act upon the subject matter, is always *one* for judicial determination." Thus, in its paraphrase of the Court's language, the Commission has changed and distorted the entire meaning of the Court's language. As a matter of fact, this case supports our own contention here, that the jurisdictional issue was a matter for *judicial* determination and that judicial determination

was previously made by the Court of Appeals for the District of Columbia Circuit.

The Commission's reliance upon Davis, *Administrative Law* (1958), § 18.07, is also misplaced. Davis, based upon a review of the authorities, states that to "say that a tribunal cannot confer power upon itself merely by making a finding that it has jurisdiction is entirely logical." Moreover, Davis states, "But equally logical is the proposition that every tribunal has jurisdiction to determine its own jurisdiction and that if the parties have litigated the question of jurisdiction once, the policies against relitigation are fully applicable."

VI.

In Opinion No. 378-A the Commission continues to make the wholly unwarranted and inaccurate assertion that the jurisdictional question was not "in issue" and "received little attention" in the case of *Public Service Commission* v. *F.P.C.* 287 F. 2d 143, 145, 146, in the District of Columbia Circuit involving review of the Commission's Opinion No. 322, in which the Commission itself held that it lacked jurisdiction. As we have previously pointed out, the Commission's brief in that court case is replete with references and arguments supporting its lack of jurisdiction. And the court itself stated unequivocally that "the Commission has been held to lack jurisdiction over gas leases," citing in support of this legal conclusion *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498. At another point in its decision, the District of Columbia Circuit referred to the transactions as "beyond the regulatory control of the Commission."

It is incomprehensible to us how the Commission can now validly claim that the jurisdictional question was not "in issue" and "received little attention" in the prior

court proceedings. The Commission's lack of jurisdiction over the gas leases involved was the fundamental premise upon which both the Commission and the Court acted and both

the Commission and the Court relied upon the *Panhandle* case in reaching this conclusion. In sum and substance, the Commission now seeks to repudiate not only its own prior decisions but the decision of the District of Columbia Circuit as well. In this effort, the Commission has repeatedly resorted to the ineffectual and inaccurate device of accusing the Court of paying "little attention" to the jurisdictional question.

VII.

On pages 4 and 5 of Opinion No. 378-A the Commission attempts to meet our contention that it lacks legal power to require a "new arrangement," as provided for in Opinion No. 378, by now asserting, in Opinion No. 378-A, that "it is not necessary to discuss the extent of our power to reform contracts under the Natural Gas Act, for we did not attempt to do so here." The Commission now states that it "intended to give the parties further opportunity to obtain certificates in these proceedings for a sale of gas which they have consummated at least in part." Furthermore, the Commission now states:

> ". . . Without such revised filings we would be constrained to deny certificates, and, in such case, the parties would be in the position of being in violation of the Natural Gas Act. We did not intend to order the parties to execute a particular kind of contract, or any contract, apart from the

necessity of completing the present proceedings. In order to make our meaning clearer we shall revise our finding (7) and ordering clause (B) as shown below."

A comparison of finding (7) and ordering clause (B), as contained in Opinion No. 378, with the similar provisions in Opinion No. 378-A, shows that the Commission has purportedly substituted for the mandatory language of Opinion No. 378 the permissive language "opportunity be afforded for further filings" and "opportunity to make filings," in Opinion No. 378-A. In this fashion the Commission apparently believes that it can successfully escape its lack of legal power to require the execution of new contracts or "new arrangements." While the Commission purportedly makes it permissive, rather than mandatory, for revised filings to be made, it has at the same time declared that unless such "revised filings" are made "the parties would be in the position of being in violation of the Natural Gas Act." Thus, these modifications of Opinion No. 378 contained in Opinion No. 378-A, constitute an indirect, rather than a direct, means of attempting to force revised filings to be submitted and are as patently unlawful as the mandatory requirement of Opinion No. 378.

VIII.

In its modified finding clause (7), as set forth on page 5 of its Opinion No. 378-A, the Commission erroneously

purports to offer opportunity for "further filings on the part of Texas Eastern and its suppliers of gas." This finding and statement of the Commission is erroneuos for the reason that it improperly refers to Sun and to other sellers of leases as suppliers of gas, a term which in its normal and

accepted understanding applies only to those engaged in the production and delivery of gas to another. Sun and the other sellers having disposed of their gas leasehold interests and at no time being engaged in the production of such gas for delivery to Texas Eastern are not "suppliers of gas." Furthermore, such finding implies that Sun and the other parties who sold gas leaseholds have "filings" of some sort presently before the Commission, contrary to fact. There are no "further filings" for Sun to make because it has no present filings before the Commission.

IX.

The Commission is in error in its ordering clause (B) as set forth in Opinion No. 378-A, page 6, by inconsistently purporting to grant opportunity to make filings of appropriate rate schedules and applications for certificates of public convenience and necessity to Sun and others characterized as "Rayne Field producers" while at the same time recognizing that they have transferred their gas leases.

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It is further evident that it is neither possible nor appropriate for parties without ownership of leases to file rate schedules or applications for certificates of public convenince and necessity with respect to any production or any sale of gas from leases which they do not own.

X.

On pages 4 and 5 of Opinion No. 378-A the Commission states that "Without such revised filings we would be constrained to deny certificates, and, in such case, the parties would be in the position of being in violation of the Natural Gas Act." This assertion that the parties would be in violation of the Natural Gas Act has not heretofore been mentioned in previous Commission orders and apparently has now being resorted to by the Commission as a means by

which it seeks to compel or force the parties selling the gas leaseholds to Texas Eastern to make filings. The purpose of this requirement is apparent. The Commisison has in effect threatened to invoke the penalty provisions of the Natural Gas Act as a sanction for non-compliance with its unlawful orders. This approach is beyond any legal authority conferred upon the Commission by the Natural Gas Act. In refutation of this statement by the Commission, Sun asserts that it has not violated the Natural Gas Act and cannot lawfully be subjected to any of the penalties prescribed by that Act.

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XI.

In Opinion No. 378-A the Commission has ordered that its Opinion No. 378 be confirmed except as modified by its orders issued April 2, 1963 and May 1, 1963 and by Opinion No. 378-A, and has modified or altered the language of finding clause (7) and ordering clause (B) of its Opinion No. 378. As a result of these generalized modifications or changes in its original Opinion No. 378, and by carrying forward the composite of four separate orders without clearly or definitely identifying the changed modifications of the earlier orders, the Commission has created a situation which renders its various orders vague, indefinite, uncertain and, in many respects, unintelligible and inconsistent, and its orders are accordingly invalid on this additional ground.

XII.

In view of the fact that the Commission, in Opinion No. 378-A, purports to confirm its previous Opinion No. 378 as modified by its further orders of April 2, 1963 and May 1, 1963 and has not, in its further Opinion No. 378-A, dealt with or attempted to meet many of the grounds of error which were asserted in Sun's previous application for re-

hearing of Opinion No. 378, filed on March 6, 1963, and its application for rehearing of the Commission's order of April 2, 1963,

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filed on April 17, 1963, these applications for rehearing are hereby incorporated by reference herein and made a part hereof.

WHEREFORE, for all of the foregoing reasons, Sun requests the Commission to grant this application for rehearing and to reverse and set aside its Opinion No. 378, its orders of April 2, 1963 and May 1, 1963 and its Opinion No. 378-A.

Respectfully submitted,

SUN OIL COMPANY

By ROBERT E. MAY

ROBERT E. MAY
Its Attorney

John A. Ward, III
Phillip D. Endom
1608 Walnut Street
Philadelphia 3, Pennsylvania

Joiner Cartwright
Herf M. Weinert
P. O. Box 2831
Beaumont, Texas

Robert E. May
May, Shannon and Morley
1700 K Street, N.W.
Washington 6, D. C.
Attorneys for Sun Oil Company

Martin A. Row
P. O. Box 2880
Dallas, Texas
Of Counsel

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DISTRICT OF COLUMBIA) ss:

Robert E. May, being first duly sworn, deposes and says that he is an attorney for Sun Oil Company; that as such he has signed the foregoing "Application for Rehearing by Sun Oil Company" for and on behalf of said Company; that he is authorized so to do; that he has read said Application and is familiar with the contents thereof; and that the matters and things therein set forth are true and correct to the best of his knowledge, information and belief.

ROBERT E. MAY
Robert E. May

Subscribed and sworn to before me, a Notary Public, this 25th day of July, 1963.

THOMAS C. EVANS
Thomas C. Evans
Notary Public

(SEAL)

My Commission expires Sepetember 14, 1965.

4698-4701

CERTIFICATE OF SERVICE

4702

BEFORE THE FEDERAL POWER COMMISSION

(Docketed Jul 29, 1963)

In the Matters of

Docket Nos. G-12446, G-12447
Texas Eastern Transmission Corporation

Docket No. G-12432
Continental Oil Company

Application for Rehearing by M. H. Marr

Comes now M. H. Marr ("Marr") and, pursuant to the provisions of Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules of Practice and Procedure, being aggrieved, hereby applies for rehearing of the Commission's Opinion No. 378-A and accompanying order issued in the above-entitled proceeding on July 12, 1963. In support of this application for rehearing, Marr states as follows:

I.

In Opinion No. 378-A, entitled "Opinion and Order on Rehearing," the Commission (Commissioner Woodward dissenting) has reiterated and reaffirmed the unlawful assumption of jurisdiction over the sale by Marr, with certain reservations, of oil and gas leases in the Rayne Field, Acadia Parish, Louisiana, to Louisiana Gas Corporation, an affiliate of Texas Eastern

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Transmission Corporation ("Texas Eastern"), which the Commission had previously asserted in Opinion No. 378 and in its order issued April 2, 1963. In reaffirming this erroneous finding and conclusion the Commission has, in Opinion No. 378-A, advanced new and additional legally

untenable arguments in an attempt to justify its unlawful assertion of jurisdiction, and Marr therefore applies for rehearing of this latest Opinion and Order.

II.

Contrary to the statement on page 1 of the Commission's Opinion No. 378-A, Marr did not contend that its denial of notice was confined to consideration of "the jurisdictional question." Moreover, the Commission's Opinion No. 378-A is in error in stating that (p. 2) "no additional evidentiary hearing is desired by the parties." As was made clear in the application for rehearing filed on March 7, 1963, (pp. 4-7), Marr contended that he was denied any notice of the matters considered and disposed of by Opinion No. 378 and accompanying order of February 6, 1963, and did not confine his allegation of error to a denial of notice with respect to the question of jurisdiction. Similarly, with respect to his request for a hearing, Marr's complaint is that he is entitled to a full hearing contemplating the introduction of evidence,

the right to cross-examine and to present argument orally and in briefs. The Commission's order of April 2, 1963, effectively denied Marr the full hearing which was requested and to which he is entitled and such denial deprived Marr of due process in violation of the Natural Gas Act and the Administrative Procedure Act.

III

In the first complete paragraph on page 2 of its Opinion No. 378-A the Commission states that it sees "no need to repeat" its discussions of the jurisdictional issue but then asserts that the "quick answer to the producers' additional argument that under the law of Louisiana there is no such thing as a sale of gas in place is that we are interpreting

and applying the Natural Gas Act, not state law." In this summary fashion the Commission attempts to deal with the valid legal objection which Marr registered in his application for rehearing of Opinion No. 378, to the Commission's inaccurate and illegal characterization of this transaction risdiction question. The leasehold sale was not a sale in as an "in-place sale of the Rayne Field gas to Texas Eastern." The Commission does not even attempt to dipute the fact, as stated in Marr's application for rehearing, that under Louisiana law there is no legaly recognizable sale of gas in place;

that one may own the land or the right to produce minerals therefrom or may own gas after severance and capture by production; and that no one can own, or sell, gas in place in Louisiana. This invalid "in place" characterization by the Commission was obviously used to convey the erroneous impression that the sale of the gas leases involved was equivalent to a "wholesale" sale and thus within the Commission's jurisdiction. This distorted interpretation of the nature of the transaction is as invalid under the Natural Gas Act as it is under Louisiana law, and the Commission may not legally change its nature on the premise that it is "interpreting and applying the Natural Gas Act, not state law."

It is the Louisiana law which determines the legal consequences and the character of the transaction and not the Natural Gas Act. The sale must be construed in the light of the Louisiana law as interpreted by the Courts of that State.

IV.

In Opinion No. 378-A the Commission attempts to refute Marr's claim of error because the Commission disregarded

the determination and ruling of the Internal Revenue Service that the sales in the form described in the lease Sale Agreement were of leasehold rights subject to capital gains rate rather than ordinary rates. The Commission's citation of the

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case of *Colorado Interstate Gas Co.* v. *F.P.C.*, 209 F. 2d 717, 727, in an attempt to support its disregard of the ruling of the Internal Revenue Service is entirely misplaced as that case does not constitute a valid precedent for the Commission's action here. As the Court pointed out in that case, the Internal Revenue Service's action there involved was adopted "for another purpose and at another time" that is it was "adopted six years before." In this case, the ruling of the Internal Revenue Service was obtained in connection with and was an integral part of the same transaction. As set forth in Marr's original application for rehearing, obtaining the ruling was a condition precedent to the consummation of the transaction itself and was a critical consideration in Marr's decision to enter into the transaction.

V.

In the last complete paragraph on page 2 of Opinion No. 378-A the Commission again makes a futile effort to distinguish the Supreme Court's decision in *F.P.C* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, this time on apparently the sole ground "that contrary to the situation in the *Panhandle* case the leases in this case were transferred to a pipeline which intended to transport the gas in interstate commerce."

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But it must be recognized that the Commission's concern was related directly to the problem as to the effect the transaction would have on the interstate service of Pan-

handle to which the acreage there involved had been previously dedicated.

Again, in footnote 2 on page 3 of Opinion No. 378-A the Commission abandons its other unsuccessful attempts to distinguish the *Panhandle* case, previously attempted in Opinion No. 378, and states "However, the most important distinction between this case and *Panhandle* remains, for here the sale was made in order to supply the interstate market." The Commission's total disregard of the limitations upon its jurisdiction contained in the Natnral Gas Act and its refusal to recognize any such limitations is clearly evident from its language on page 2 of Opinion No. 378-A where it states:

> ". . . The lease transfer transaction, however designated and under whatever provisions of local law, was a means by which the producers were paid for their gas by a pipeline which transported the gas and delivered it to buyers in other states."

Under the above quoted language, the Commission has asserted unlimited jurisdiction over any "means by which the producers were paid for their gas by a pipeline" provided only that the gas subsequently moves in interstate commerce. In the first place, the use of the term "producers" to describe

the parties who sold and conveyed the leases to Texas Eastern is incorrect and misleading. Texas Eastern alone was and is the "producer" of gas from the leases which were sold and conveyed to it.

In the second place, the broad assertion of jurisdiction by the Commission is wholly illegal and repudiates the limitations upon its jurisdiction heretofore repeatedly recognized by the Commission itself and by the courts. In direct

refutation of the Commission's attempt here to expand its jurisdiction beyond that conferred by the Natural Gas Act, and contrary to the Commission's futile effort to distinguish the *Panhandle* case on the ground that the gas reserves there involved were to move intrastate instead of interstate, the Supreme Court's decision in the *Panhandle* case was predicated upon the absence of jurisdiction over gas leases because they are production facilities and the sale of such gas leases involves a production activity over which the Commission has no jurisdiction. Specifically, the Supreme Court did not base its decision upon the circumstances that the gas involved in the *Panhandle* case was to move intrastate instead of interstate, and the Commission's attempt to distinguish the case on that ground is without any foundation whatsoever.

In footnote 2, on pages 2 and 3 of Opinion No. 378-A the Commission retreats somewhat from several of its erroneous

statements and conclusions in Opinion No. 378 which were pointed out in Marr's previous applications for rehearing. However, the Commission characterizes these corrections as not "material" or would not "change our view of the transaction." This attitude of the Commission serves to emphasize that it is determined to assert jurisdiction over this sale in defiance of previous Commission and Court precedents to the contary.

VI.

On pages 3 and 4 of Opinion No. 378-A the Commission attempts to avoid its own previous holding that it lacks jurisdiction in this case over the sale of the gas leases involved, and the affirmance of this lack of jurisdiction by the Court of Appeals for the District of Columbia Circuit, by

misplaced reliance upon statements such as it "is a well-known principle that the question of jurisdiction, that is the competency of the administrative agency to act upon the subject matter, is always open for judicial determination." In support of this statement, the Commission cites *Borax, Ltd.* v. *Los Angeles*, 296 U.S. 10, 18. The misuse of this case for the purpose stated is apparent. On the page reference given by the Commission the Supreme Court did not use the language attributed to it, namely, that the question of jurisdiction "is always *open* for judicial determination." On the contrary, the Court

stated "the principle that the question of jurisdiction, that is, of the competency of the Department to act upon the subject matter, is always *one* for judicial determination." Thus, in its paraphrase of the Court's language, the Commission has changed the entire meaning of the Court's language. As a matter of fact, this case supports our own contention here, that the jurisdictional issue was a matter for *judicial* determination and that judicial determination was previously made by the Court of Appeals for the District of Columbia Circuit.

The Commission also cites Davis, *Administrative Law* (1958), § 18.07, to support a statement that this "principle has also been applied to reconsideration of jurisdictional questions by administrative agencies where the equities involved so required." The first paragraph of the section cited begins with the statement which fully supports our own contention in this case, that to "say that a tribunal cannot confer power upon itself merely by making a finding that it has jurisdiction is entirely logical." Moreover, the next sentence states, "but equally logical is the proposition that every tribunal has jurisdiction to determine its own jurisdiction and that if the parties have litigated the

question of jurisdiction once, the policies against relitigation are fully applicable."

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Thus the Davis treatise, cited in Opinion No. 378-A, does not lend support to but is actually contrary to the Commission's contentions here.

VII.

In Opinion No. 378-A the Commission continues to make the wholly inaccurate assertion that the jurisdictional question was not "in issue" and "received little attention" in the case of *Public Service Commission* v. *F.P.C.*, 287 F. 2d 143, 145, 146, in the District of Columbia Circuit involving review of the Commission's Opinion No. 322, in which the Commission itself held that it lacked jurisdiction. As we have previously pointed out, the Commission's brief in that court case is replete with references and arguments supporting its lack of jurisdiction. And the Court itself stated unequivocally that "the Commission has been held to lack jurisdiction over gas leases," citing in support of this legal conclusions *F.P.C. v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498. At another point in its decision, the District of Columbia Circuit referred to the sale as "beyond the regulatory control of the Commission."

It is incomprehensible to us how the Commission can now validly claim that the jurisdictional question was not

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"in issue" and "received little attention" in the prior court proceedings. The Commission's lack of jurisdiction over the sale of the gas leases involved was the fundamental premise upon which both the Commission and the Court acted and both the Commission and the Court relied upon the *Panhandle* case in reaching this conclusion. Actually, the Commission now seeks to repudiate not only its own prior

decisions but the decision of the District of Columbia as well. In this effort, the Commission has repeatedly resorted to the inaccurate device of accusing the Court of paying "little attention" to the jurisdictional question.

VIII.

On pages 4 and 5 of Opinion No. 378-A the Commission attempts to meet our contention that it lacks legal power to require a "new arrangement," as provided for in Opinion No. 378, by now asserting, in Opinion No. 378-A, that "it is not necessary to discuss the extent of our power to reform contracts under the Natural Gas Act, for we did not attempt to do so here." The Commission now states that it "intended to give the parties further opportunity to obtain certificates in these proceedings for a sale of gas which they have consummated at least in part." Furthermore, the Commission now

states:

> " • • • Without such revised filings we would be constrained to deny certificates, and, in such case, the parties would be in the position of being in violation of the Natural Gas Act. We did not intend to order the parties to execute a particular kind of contract, or any contract, apart from the necessity of completing the present proceedings. In order to make our meaning clearer we shall revise our finding (7) and ordering clause (B) as shown below."

A comparison of finding (7) and ordering clause (B), as contained in Opinion No. 378, with the similar provisions in Opinion No. 378-A, shows that the Commission has purportedly substituted for the mandatory language of Opinion No. 378 the permissive language "opportunity be

afforded for further filings" and "opportunity to make filings," in Opinion No. 378-A. In this fashion the Commission apparently believes that it can successfully escape its lack of legal power to require the execution of new contracts or "new arrangements." While the Commission purportedly makes it permissive, rather than mandatory, for revised filings to be made, it has at the same time declared that unless such "revised filings" are made "the parties would be in the position of being in violation of the Natural Gas Act." Thus, these modifications of Opinion No. 378, contained in Opinion No. 378-A, constitute an indirect, rather than a direct, means of attempting to force revised filings to be submitted and

is as patently unlawful as the mandatory requirement of Opinion No. 378.

IX.

This application for rehearing is being filed out of an abundance of caution and to preclude any assertion by the Commission that Marr has not exhausted his administrative remedies. In so filing this application Marr is not waiving any of the contentions previously asserted in his applications for rehearing filed with the Commission on March 7, 1963 and April 15, 1963, but on the contrary reasserts such contentions and incorporates such applications herein by reference.

As a further precaution against any assertion that Marr has not availed himself of all legal remedies, Marr is filing concurrently herewith a supplement to his petition for review in the United States Court of Appeals for the Fifth Circuit in Docket No. 20560 to request review of the Commission's Opinion No. 378-A and accompanying order of July 12, 1963. By such supplemental petition Marr is not waiving his contention that the Respondent's Opinion No.

378 and accompanying order of February 6, 1963 and the order of April 2, 1963 constitute final orders subject to review or any of his other contentions under the original petition for

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review filed on May 22, 1963 but on the contrary reasserts all of the contentions and allegations of error set forth therein.

WHEREFORE, for all of the foregoing reasons, Marr requests the Commission to grant this application for rehearing and to reverse and set aside its Opinion No. 378, its order of April 2, 1963 and its Opinion No. 378-A.

Respectfully submitted,

M. H. MARR
By STANLEY M. MORLEY
Attorney for Petitioner

Donley C. Wertz
2500 Republic National Bank Building
Dallas, Texas

May, Shannon and Morley
1700 K Street, N. W.
Washington 36, D. C.

Hargrove, Guyton and Van Hook
Texas Eastern Building
Shreveport, Louisiana
Attorneys for Petitioner

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DISTRICT OF COLUMBIA) SS:

Stanley M. Morley, being first duly sworn, deposes and says that he is an attorney for M. H. Marr; that as such he has signed the foregoing "Application For Rehearing by M. H. Marr" for and on behalf of said Company; that

he is authorized so to do; that he has read said Application and is familiar with the contents thereof; and that the matters and things therein set forth are true and correct to the best of his knowledge, information and belief.

STANLEY M. MORLEY
Stanley M. Morley

Subscribed and sworn to before me, a Notary Public, this 29th day of July, 1963.

Thomas C. Evans
Notary Public

(SEAL)

My Commission expires September 14, 1965.

4717-4720

CERTIFICATE OF SERVICE

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BEFORE THE
FEDERAL POWER COMMISSION
UNITED STATES OF AMERICA

In the Matters of

Docket Nos. G-12446, G-12447

Texas Eastern Transmission Corporation

G-12432

Continental Oil Company

Application for Rehearing by General Crude Oil Company

Docketed July 31, 1963

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Comes now General Crude Oil Company ("General Crude") and, pursuant to the provisions of section 19(a) of the Natural Gas Act and Section 1.34 of the Commis-

sion's Rules of Practice and procedure, being aggrieved, hereby applies for rehearing of the Commission's Opinion No. 378-A in the above-entitled proceedings, issued on July 12, 1963 and of Opinion No. 378, issued February 6, 1963 as modified by the Commission's orders issued April 2, 1963 and May 1, 1963 and by Opinion No. 378-A. In support of this application for rehearing, General Crude states as follows:

I.

In Opinion No. 378-A, entitled "Opinion and Order on Rehearing" the Commission (Commissioner Woodward dissenting) has reiterated and reaffirmed the unlawful assumption of jurisdiction over the assignment and conveyance by General Crude of gas leaseholds located in the Rayne Field, Acadia

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Parish, Louisiana, to Louisiana Gas Corporation, an affiliate of Texas Eastern Transmission Corporation ("Texas Eastern"), which the Commission had previously asserted in Opinion No. 378 and in its order issued April 2, 1963. In reaffirming this erroneous finding and conclusion the Commission has, in Opinion No. 378-A, advanced additional legally untenable positions and argument in an attempt to justify its unlawful assertion of jurisdiction and General Crude therefore applies for rehearing of this latest Opinion and Order.

II.

In the first complete paragraph on page 2 of its Opinion No. 378-A the Commission states that it sees "no need to repeat" its discussions of the jurisdictional issue but then asserts that the "quick answer to the producers' additional argument that under the law of Louisiana there is no such thing as a sale of gas in place is that we are interpreting

and applying the Natural Gas Act, not state law." In this summary and superficial fashion the Commission attempts to deal with the valid legal objection which General Crude registered in its application for rehearing of Opinion No. 378, to the Commission's inaccurate, misleading and illegal characterization of this transaction as an "in-place sale of the Rayne Field gas to Texas Eastern." The Commission does not even attempt to dispute the fact, as stated in General Crude's

application for rehearing, that under Louisiana law there is no legally recognizable sale of gas in place; that one may only own the land or the right to produce minerals therefrom or may own gas after severance by production; and that no one can own, or sell, gas in place in Louisiana. This invalid "in place" characterization by the Commission, as well as its equally invalid "in bulk" terminology employed in its Opinion No. 378, were obviously purposely used to convey the erroneous impression that the sale of gas leases involved was tantamount to a "wholesale" sale and thus within the Commission's jurisdiction. This distorted characterization and interpretation of the nature of the transaction is as invalid under the Natural Gas Act as it is under Louisiana law, and the Commission may not legally change its essential nature on the premise that it is "interpreting and applying the Natural Gas Act, not state law."

III.

In Opinion No. 378-A the Commission attempts to refute General Crude's claim of error because the Commission disregarded the determination and ruling of the Internal Revenue Service that the sales in the form described in the Lease Sale Agreement were of leasehold rights sub-

ject to tax treatment as capital gains rather than sales of gas subject to treatment as normal income. The Commission's citation

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of the case of *Colorado Interstate Gas Co.* v. *F.P.C.*, 209 F. 2d 717, 727, in an attempt to support its disregard of the ruling of the Internal Revenue Service is entirely misplaced as that case does not constitute a valid precedent for the Commission's action here. As the Court pointed out in that case, the Internal Revenue Service's action there involved was adopted "for another purpose and at another time" that is, it was "adopted six years before." On the contrary, in this case, the ruling of the Internal Revenue Service was obtained in connection with and was part and parcel of the same transaction. As a matter of fact, obtaining the ruling was a condition attached to the consummation of the transaction itself. The Commission's further attempt to distinguish the case of *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U.S. 381, is equally invalid. In that case the Supreme Court, among other things, stated that there "is privity between officers of the same government" and that "the principles of res judicata apply to questions of jurisdiction as well as to other matters—whether it be jurisdiction of the subject matter or of the parties." These principles are applicable here.

IV.

In the last complete paragraph on page 2 of Opinion No. 378-A the Commission again makes a vain and

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futile effort to distinguish the Supreme Court's decision in *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, this time on the primary and apparently the sole

ground "that contrary to the situation in the *Panhandle* case the leases in this case were transferred to a pipeline which intended to transport the gas in interstate commerce." Again, in footnote 2 on page 3 of Opinion No. 378-A the Commission abandons its other unsuccessful attempts to distinguish the *Panhandle* case, previously attempted in Opinion No. 378 and states "However, the most important distinction between this case and *Panhandle* remains, for here the sale was made in order to supply the interstate market." The Commission's total disregard of the limitations upon its jurisdiction contained in the Natural Gas Act and its failure and refusal to recognize any such limitations is clearly evident from its language on page 2 of Opinion No. 378-A where it states:

> ". . . The lease transfer transaction, however designated and under whatever provisions of local law, was a means by which the producers were paid for their gas by a pipeline which transported the gas and delivered it to buyers in other states."

Under the foregoing language, the Commission has asserted unlimited jurisdiction and authority over any means by which the owners of properties capable of producing gas are paid for the sale of such properties, provided only that the gas subsequently produced from such properties

moves in interstate commerce. In the first place, the use of the term "producers" to describe the parties who sold and conveyed the leases to Texas Eastern in this transaction is incorrect and misleading. Texas Eastern alone was and is the "producer" of gas from the leases which were sold and conveyed to it by this transaction.

In the second place, the broad assertion of jurisdiction by the Commission is wholly illegal and disregards and repudiates the limitations upon its jurisdiction heretofore repeatedly recognized by the Commission itself and the the courts. In direct refutation of the Commission's attempt here to expand its jurisdiction beyond that conferred by the Natural Gas Act, and contrary to the Commission's futile effort to distinguish the *Panhandle* case on the ground that the gas to be produced from the leases there involved was to move intrastate instead of interstate, the Supreme Court's decision in the *Panhandle* case was predicated upon the absence of jurisdiction over gas leases because they are production facilities and the transfer of such gas leases involves a production activity over which the Commission has no jurisdiction. Specifically, the Supreme Court did not base its decision upon the circumstances that the gas involved in the *Panhandle* case was to move intrastate instead of interstate, and the Commission's attempt to distinguish the case on that ground is without any foundation whatsoever.

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In footnote 2, on pages 2 and 3 of Opinion No. 378-A the Commission retreats somewhat from several of its erroneous statements and conclusions in Opinion No. 378 which were pointed out in General Crude's previous applications for hearing. However, the Commission characterizes these corrections as not "material" or would not "change our view of the transaction." This attitude of the Commission serves to emphasize that it is determined to assert jurisdiction over this transaction, irrespective of any misunderstandings it may have had of the factual situation and that it has repeatedly shifted its grounds for asserting jurisdiction, all in defiance of previous Commission and Court precedent to the contrary.

V.

On pages 3 and 4 of Opinion No. 378-A the Commission attempts to avoid its own previous holding that it lacks jurisdiction in this case over the transfer of gas leases involved, and the affirmance of this lack of jurisdiction by the Court of Appeals for the District of Columbia Circuit, by misplaced reliance upon statements such as it "is a well-known principle that the question of jurisdiction, that is the competency of the administrative agency to act upon the subject matter, is always open for judicial determination." In support of this statement, the Commission cites *Borax,*

Ltd. v. *Los Angeles,* 296 U.S. 10, 18. The misuse of this case for the purpose stated is apparent. On the page reference given by the Commission the Supreme Court did not use the language attributed to it, namely, that the question of jurisdiction "is always *open* for judicial determination." On the contrary, the Court stated "the principle that the question of jurisdiction, that is, of the competency of the Department to act upon the subject matter, is always *one* for judicial determination." Thus, in its paraphrase of the Court's language, the Commission has changed and distorted the entire meaning of the Court's language. As a matter of fact, this case supports our own contention here, that the jurisdictional issue was a matter for judicial determination and that judicial determination was previously made by the Court of Appeals for the District of Columbia Circuit.

The Commission's reliance upon Davis, *Administrative Law* (1958), § 18.07, is also misplaced. Davis, based upon a review of the authorities, states that to "say that a tribunal cannot confer power upon itself merely by making a finding that it has jurisdiction is entirely logical."

Moreover, Davis states, "But equally logical is the proposition that every tribunal has jurisdiction to determine its own jurisdiction and that if the parties have litigated the question of jurisdiction once, the policies against relitigation are fully applicable."

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VI.

In Opinion No. 378-A the Commission continues to make the wholly unwarranted and inaccurate assertion that the jurisdictional question was not "in issue" and "received little attention" in the case of *Public Service Commission* v. *F.P.C.*, 287 F. 2d 143, 145, 146, in the District of Columbia Circuit involving review of the Commission's Opinion No. 322, in which the Commission itself held that it lacked jurisdiction. As we have previously pointed out, the Commission's brief in that court case is replete with references and arguments supporting its lack of jurisdiction. And the court itself stated unequivocally that "the Commission has been held to lack jurisdiction over gas leases," citing in support of this legal conclusion *F.P.C.* v. *Panhandle Eastern Pipe Line Co*, 337 U.S. 498. At another point in its decision, the District of Columbia Circuit referred to the transactions as "beyond the regulatory control of the Commission."

It is incomprehensible to us how the Commission can now validly claim that the jurisdictional question was not "in issue" and "received little attention" in the prior court proceedings. The Commission's lack of jurisdiction over the gas leases involved was the fundamental premise upon which both the Commission and the Court acted and both

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the Commission and the Court relied upon the *Panhandle* case in reaching this conclusion. In sum and substance,

the Commission now seeks to repudiate not only its own prior decisions but the decision of the District of Columbia Circuit as well. In this effort, the Commission has repeatedly resorted to the ineffectual and inaccurate device of accusing the Court of paying "little attention" to the jurisdictional question.

VII.

On pages 4 and 5 of Opinion No. 378-A the Commission attempts to meet our contention that it lacks legal power to require a "new arrangement," as provided for in Opinion No. 378, by now asserting, in Opinion No. 378-A, that "it is not necessary to discuss the extent of our power to reform contracts under the Natural Gas Act, for we did not attempt to do so here." The Commission now states that it "intended to give the parties further opportunity to obtain certificates in these proceedings for a sale of gas which they have consummated at least in part." Furthermore, the Commission now states:

> ". . . Without such revised filings we would be constrained to deny certificates, and, in such case, the parties would be in the position of being in violation of the Natural Gas Act. We did not intend to order the parties to execute a particular kind of contract, or any contract, apart from the

> necessity of completing the present proceedings. In order to make our meaning clearer we shall revise our finding (7) and ordering clause (B) as shown below."

A comparison of finding (7) and ordering clause (B), as contained in Opinion No. 378, with the similar provisions in Opinion No. 378-A, shows that the Commission has purportedly substituted for the mandatory language of Opin-

ion No. 378 the permissive language "opportunity be afforded for further filings" and "opportunity to make filings," in Opinion No. 378-A. In this fashion the Commission apparently believes that it can successfully escape its lack of legal power to require the execution of new contracts or "new arrangements." While the Commission purportedly makes it permissive, rather than mandatory, for revised filings to be made, it has at the same time declared that unless such "revised filings" are made "the parties would be in the position of being in violation of the Natural Gas Act." Thus, these modifications of Opinion No. 378 contained in Opinion No. 378-A, constitute an indirect, rather than a direct, means of attempting to force revised filings to be submitted and are as patently unlawful as the mandatory requirement of Opinion No. 378.

VIII.

In its modified finding clause (7), as set forth on page 5 of its Opinion No. 378-A, the Commission erroneously

purports to offer opportunity for "further filings on the part of Texas Eastern and its suppliers of gas." This finding and statement of the Commission is erroneous for the reason that it improperly refers to General Crude and to other sellers of leases as suppliers of gas, a term which in its normal and accepted understanding applies only to those engaged in the production and delivery of gas to another. General Crude and the other sellers having disposed of their gas leasehold interests and at no time being engaged in the production of such gas for delivery to Texas Eastern are not "suppliers of gas." Furthermore, such finding implies that General Crude and the other parties who sold gas leaseholds have "filings" of some sort presently before the Commission, contrary to fact.

There are no "further filings" for General Crude to make because it has no present filings before the Commission.

IX.

The Commission is in error in its ordering clause (B) as set forth in Opinion No. 378-A, page 6, by inconsistently purporting to grant opportunity to make filings of appropriate rate schedules and applications for certificates of public convenience and necessity to General Crude and others characterized as "Rayne Field producers" while at the same time recognizing that they have transferred their gas

leases. It is further evident that it is neither possible nor appropriate for parties without ownership of leases to file rate schedules or applications for certificates of public convenience and necessity with respect to any production or any sale of gas from leases which they do not own.

X.

On pages 4 and 5 of Opinion No. 378-A the Commission states that "Without such revised filings we would be constrained to deny certificates, and, in such case, the parties would be in the position of being in violation of the Natural Gas Act." This assertion that the parties would be in violation of the Natural Gas Act has not heretofore been mentioned in previous Commission orders and apparently has now been resorted to by the Commission as a means by which it seeks to compel or force the parties selling the gas leaseholds to Texas Eastern to make filings. The purpose of this requirement is apparent. The Commission has in effect threatened to invoke the penalty provisions of the Natural Gas Act as a sanction for noncompliance with its unlawful orders. This approach is

beyond any legal authority conferred upon the Commission by the Natural Gas Act. In refutation of this statement by the Commission, General Crude asserts that it has not violated the Natural Gas Act and cannot lawfully be subjected to any of the penalties prescribed by that Act.

4735

XI.

In Opinion No. 378-A the Commission has ordered that its Opinion No. 378 be confirmed except as modified by its orders issued April 2, 1963 and May 1, 1963 and by Opinion No. 378-A, and has modified or altered the language of finding clause (7) and ordering clause (B of its Opinion No. 378. As a result of these generalized modifications or changes in its original Opinion No. 378, and by carrying forward the composite of four separate orders without clearly or definitely identifying the changed modifications of the earlier orders, the Commission has created a situation which renders its various orders vague, indefinite, uncertain and, in many respects, unintelligible and inconsistent, and its orders are accordingly invalid on this additional ground.

XII.

In view of the fact that the Commission, in Opinion No. 378-A, purports to confirm its previous Opinion No. 378 as modified by its further orders of April 2, 1963 and May 1, 1963 and has not, in its further Opinion No. 378-A, dealt with or attempted to meet many of the grounds of error which were asserted in General Crude's previous application for rehearing of Opinion No. 378, filed on March 6, 1963, and its application for rehearing of the Commission's order of April 2, 1963, filed

on April 22, 1963, these applications for rehearing are hereby incorporated by reference herein and made a part hereof.

WHEREFORE, for all of the foregoing reasons, General Crude requests the Commission to grant this application for rehearing and to reverse and set aside its Opinion No. 378, its orders of April 2, 1963 and May 1, 1963 and its Opinion No. 378-A.

Respectfully submitted,

GENERAL CRUDE OIL COMPANY

By W. M. STREETMAN
W. M. Streetman
Its Attorney

Leon M. Payne, Esq.
W. M. Streetman, Esq.
Andrews, Kurth, Campbell & Jones
25th Floor Humble Building
Houston 2, Texas
Attorneys for General Crude Oil Company

THE STATE OF TEXAS
COUNTY OF HARRIS

W. M. Streetman, being first duly sworn, deposes and says that he is attorney for General Crude Oil Company; that as such he has signed the foregoing "Application for Rehearing by General Crude Oil Company" for and on behalf of said Company; that he is authorized so to do; that he has read said Application and is familiar with the contents thereof; and that the matters and things therein set

forth are true and correct to the best of his knowledge, information and belief.

W. M. STREETMAN
W. M. Streetman

Subscribed and sworn to before me, a Notary Public, this 30th day of July, 1963.

FAE CROPPER
Fae Cropper
Notary Public in and for
Harris County, Texas

My Commission expires June 1, 1965.

(SEAL)

4738-4742

CERTIFICATE OF SERVICE

4743

Docketed Aug. 7, 1963

Docket Nos. G-12446, et al

TEXAS EASTERN TRANSMISSION COMPANY, ET AL

Stanley H. Morley, Attorney
May, Shannon and Morley
1700 K Street, N. W.
Washington 6, D. C.

Dear Mr. Morley:

The Application for Rehearing by M. H. Marr which you submitted in the above-entitled matter on July 29, 1963, is not acceptable because there is no provision under the Natural Gas Act nor in the Commission's Rules for rehearing of orders denying rehearing.

Your application is therefore rejected and copies are returned herewith.

Very truly yours,

Secretary

Enclosure No: 9009
(12 copies application)
Dockets
Bewley, G: eac
cc: BNG
OGC
OPI
Secy (2)

4744

Docket Nos. G-12446, et al

TEXAS EASTERN TRANSMISSION CORPORATION, ET AL

Docketed Aug. 7, 1963

Robert E. May, Attorney
May, Shannon and Morley
1700 K Street, N. W.
Washington 6, D. C.

Dear Mr. May:

The Application for Rehearing by Sun Oil Company which you submitted in the above-entitled matter on July 25, 1963, is not acceptable because there is no provision under the Natural Gas Act nor in the Commission's Rules for applications for rehearing of orders denying rehearing.

Your application is therefore rejected and copies are returned herewith.

Very truly yours,

J. H. GUTRIDE
Secretary

Enclosure No. 9010
(12 copies application)
Dockets
Bewley, G: eac
cc: OGC
BNG
OPI
Secy (2)

4745

Docket Nos. G-12447, G-12446 and G-12432

TEXAS EASTERN TRANSMISSION CORPORATION

CONTINETAL OIL COMPANY

Docketed Aug. 8, 1963

Mr. W. M. Streetman
Andrews, Kurth, Campbell & Jones
25th Floor Humble Building
Houston 2, Texas

Dear Mr. Streetman:

The Application for Rehearing by General Crude Oil Company which you submitted in the above-entitled matter on July 31, 1963, is not acceptable because there is no provision under the Natural Gas Act nor in the Commission's Rules for applications for rehearing of orders denying rehearing.

Your application is therefor rejected and copies are returned herewith.

Very truly yours,

Secretary

Enclosure No: 9011
(19 copies of applications)
Dockets
GB: gfp
8/1/63
OGC
BNG
OPI
(2) SECY.

4671A

FEDERAL POWER COMMISSION
WASHINGTON 25

Texas Eastern Transmission Corporation
Docket Nos. G-12446 and G-12447
Continental Oil Company
Docket No. G-12432

May 14, 1963

Continental Oil Company
Lloyd F. Thanhouser, Esq.
Vice President and General Counsel
P. O. Box 2197
Houston 1, Texas

Gentlemen:

Reference is made to the "application for rehearing" tendered for filing on April 30, 1963, in the above-designated matters. The "application" is not addressed to a final order and as such is not acceptable for filing. It will be processed as a motion for reconsideration of the Com-

mission's order issued April 2, 1963, and you will be advised of the Commission's action thereon.

The acceptance of the tendered "application for rehearing" as a motion for reconsideration should not be construed that the 30-day provision of Section 19 (b) of the Natural Gas Act as implemented by 1.34 (c) of the Commission's Rules of Practice and Procedure, will apply to the motion.

Very truly yours,

J. H. Gutride
Secretary

4746

August 9, 1963

Mr. J. H. Gutride, Secretary
Federal Power Commission
441 G Street, N. W.
Washington 25, D. C.

Re: Texas Eastern Transmission Corporation, *et al.*
Dockets G-12,446, *et al.*

Dear Mr. Gutride:

Enclosed are the original and nineteen conformed copies of Continental's Application for Rehearing of Opinion No. 378-A, which I would appreciate your filing for us.

Very truly yours,

Tom Burton
Attorney

TB-HRN
Encs.

4747

FEDERAL POWER COMMISSION
WASHINGTON 25, D. C.

August 21, 1963

Docket Nos. G-12446, et al

TEXAS EASTERN TRANSMISSION CORPORATION, ET AL

Thomas H. Burton, Attorney
Continental Oil Company
Post Office Box 2197
Houston 1, Texas

Dear Mr. Burton:

The Conditional Application for Rehearing of Opinion No. 378-A, tendered for filing on behalf of Continental Oil Company on August 12, 1963, is not acceptable because there is no provision under the Natural Gas Act nor in the Commission's Rules for application for rehearing of orders denying rehearing.

Your application is therefore rejected and copies are returned herewith.

Very truly yours,

J. H. GUTRIDE
Secretary

Enclosure No: 9015

[fol. 1277]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 20560

M. H. MARR, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 20564

SUN OIL COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 20582

CONTINENTAL OIL COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 20587

GENERAL CRUDE OIL COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

[fol. 1278]

No. 20829

SUN OIL COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 20846

M. H. MARR, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 20847

GENERAL CRUDE OIL COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 20591

TEXAS EASTERN TRANSMISSION CORPORATION, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

Petitions for Review of Orders of the Federal Power Commission

OPINION—August 3, 1964

[fol. 1279] Before Rives and Brown, Circuit Judges, and Grooms, District Judge.

Rives, Circuit Judge: These are petitions to review certain opinions and orders of the Federal Power Com-

mission pursuant to section 19(b) of the Natural Gas Act, 15 U.S.C. §717r(b). The petitioners are M. H. Marr, Sun Oil Company, Continental Oil Company, General Crude Oil Company, and Texas Eastern Transmission Corporation. Unless otherwise noted, all of the petitioners with the exception of Texas Eastern will be referred to herein as "the assignors." The intervenors are the Public Service Commission of the State of New York, the United Gas Improvement Company, and the Public Service Electric and Gas Company.

In 1957 Texas Eastern, a natural-gas company owning and operating an interstate natural-gas transmission system, executed gas purchase contracts with the assignors to purchase their natural-gas production in the Rayne Field, Acadia Parish, Louisiana, at an initial price of 23.9¢ per Mcf, including state taxes of 1.3¢ per Mcf.[1] At that time the assignors filed applications with the Federal Power Commission seeking certificates of public convenience and necessity for the gas sales, and Texas Eastern applied for a certificate to expand its interstate pipeline system in order to receive and re-sell the gas. These sales [fol. 1280] contracts, however, were cancelled in 1958 shortly after the Third Circuit decision in *Public Service Commission* v. *FPC*, 3 Cir. 1958, 257 F.2d 717, *aff'd sub nom. Atlantic Refining Co.* v. *PSC*, 1959, 360 U.S. 378 (popularly called CATCO), and the Commission permitted the assignors to withdraw their then pending certificate applications.

After the cancellation of the sales contracts, the assignors entered into agreements whereby they purported to assign or convey certain of their leasehold rights in the Rayne Field gas to Texas Eastern.[2] The Commission al-

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[1] Although a large, developed gas reserve, the Rayne Field gas as yet was not connected with any pipeline transporting natural gas in interstate commerce nor was it dedicated to any sale in interstate commerce.

[2] The total purchase price was $134,395,700.00. The purchas, was actually Louisiana Gas Corporation, a wholly-owned subsidiary of Texas Eastern, which in turn assigned its interest to Texas Eastern. Unless otherwise noted, Texas Eastern will be treated as the purchaser.

lowed Texas Eastern to amend its application so as to reflect the new agreements and in June 1959 unconditionally authorized the construction and operation of the proposed pipeline facilities. The opinion[3] approved the project without examining into the cost to Texas Eastern of the leasehold interests and noted that the Commission had no authority to issue a certificate directly authorizing the acquisition of the leases. The Public Service Commission of New York sought review of this order, and in *Public Service Comm'n* v. *FPC*, D.C. Cir. 1961, 287 F.2d 143, it was reversed and remanded by the District of Columbia Circuit. The court observed:

> "Sales of natural gas by an independent producer are subject to Commission regulation under Sections 4 and 5 of the Natural Gas Act. Phillips Petroleum Co. [fol. 1281] v. State of Wisconsin, 1954, 347 U.S. 672, 74 S.Ct. 794, 98 L.Ed. 1035. But the Commission has been held to lack jurisdiction over gas leases. Federal Power Commission v. Panhandle Eastern Pipe Line Co., 1949, 337 U.S. 498, 69 S.Ct. 1251, 93 L.Ed. 1499."[4]

Nevertheless, the court held that the Commission did have jurisdiction over the pipeline construction project and the transactions by which Texas Eastern would dispose of the gas, for the Commission has a responsibility to regulate the purchaser, "regardless of the status of the seller."[5] Taking into consideration the Supreme Court's decision in *CATCO, supra*, the court concluded that insofar as the Commission's order purported to pass favorably upon the pricing aspects of the gas lease acquisitions, it was unsupported by substantial evidence in the record. The court offered the Commission two options: (1) clarifying the order by disclaiming any approval of the purchase price, or (2) reopening the record to allow Texas Eastern to establish that the acquisition costs would be consistent with the public convenience and necessity. The Commis-

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[3] Texas Eastern Transmission Corp., Opinion No. 322, 21 F.P.C. 860 (1959).

[4] 287 F.2d at 145.

[5] *Id.* at 146.

sion's order was reversed, and the matter remanded to the Commission for further proceedings not inconsistent with the opinion of the court.

On remand, the Commission chose to reopen the record. In these proceedings Commission counsel argued for the [fol. 1282] first time that the Commission had jurisdiction over the acquisition of the leases. The Examiner, however, rejected this contention.[6] Instead, he recommended

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[6] The Examiner's report stated:

"As far back as 1949, the Commission contended it had jurisdiction over the sale by Panhandle of certain leases and leasehold interests covering an estimated 12 per cent of the total gas reserves of Panhandle but the Supreme Court in *F.P.C. v. Panhandle Eastern Pipe Line Company, et al.*, 377 U.S. 498, recognized and upheld the traditional industry practice of a natural gas company to buy and/or sell leases and leasehold interests which are *'not connected* with any pipeline system' (emphasis supplied) without the approval of the Commission. From this, it would appear, one of the prerequisites to Commission jurisdiction is that the natural gas under the leases or leasehold interests must first be connected to a pipeline system transporting natural gas in interstate commerce. The Commission argued before the D.C. Circuit, in the following case, it did not have jurisdiction over Texas Eastern's acquisition of the Rayne Field leases and leasehold interests and, in its opinion, the Court of Appeals, D.C. Circuit, in *Public Service Commission of the State of New York v. F.P.C.*, 287 F.2d 143, 145 said '. . . the Commission has been held to lack jurisdiction over gas leases' citing *F.P.C. v. Panhandle, supra*. It is contended in the briefs filed herein the Supreme Court reversed its decision in the *Panhandle* case, *supra*, by its decision in *Phillips Petroleum Co. v. Wisconsin, et al.*, 1954, 347 U.S. 672. Quite to the contrary. In *Phillips* the Supreme Court recognized and reaffirmed the Panhandle prerequisite of the gas being attached to an interstate system of pipelines before the Commission acquired jurisdiction. . . .

". . . [T]he natural gas under consideration by the Supreme Court in its *Phillips* opinion, *supra*, had *previously* been attached to, or *connected with*, an interstate system of pipelines and, because of this connection, the gas flowed in interstate commerce and thereby became subject to the jurisdiction of the Commission.

"In applying the principles of the *Panhandle* and *Phillips* opinions, *supra*, to the evidence of record in this hearing, it is concluded the Commission was without jurisdiction over the Rayne Field lease and leasehold acquisition and the

that Texas Eastern be issued a certificate of public convenience and necessity conditioned on its charging an initial, "in line" price of 18.5¢ per Mcf, exclusive of taxes, at 15.025 [fol. 1283] psia, and further conditioned on its maintaining supplemental accounts providing cost data.

Exceptions were filed, and in February 1963 the Commission issued Opinion No. 378, wherein it asserted jurisdiction over the lease transaction.[7] Looking to the "essence" of the transaction, the Commission concluded that it was a transfer of natural gas for resale in the interstate market and that such a transfer is subject to the Commission's jurisdiction even when it occurs during the course of production and gathering. The Commission declined to inquire into the cost data and delayed passing on Texas Eastern's certificate; instead, it commanded the assignors to file appropriate rate schedules and applications for certificates for the sale of the gas, to be effective retroactively. The assignors were allowed to file applications for rehearing, but on rehearing the Commission, with one Commissioner dissenting, reaffirmed its previous holding and noted that the failure of the assignors to file for certificates would result in their violating the act. The petitioners are seeking review of these opinions and the orders related [fol. 1284] thereto.[8] The principal question to be decided is

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natural gas under said leases and leaseholds by Texas Eastern until (1) the gas was connected to an interstate system of pipelines or (2) the gas was dedicated to a sale in interstate commerce."

[7] Texas Eastern Transmission Corp., Opinion No. 378, 29 F.P.C. 249 (1963).

[8] The petitions which were filed in this Court for review of Opinion No. 378 (Nos. 20,560; 20,564; 20,582; 20,587 and 20,591) were filed while the applications for rehearing were still pending. After the opinion on rehearing was rendered, Marr, Sun and General Crude filed new petitions (Nos. 20,829; 20,846 and 20,847) seeking review of both opinions, thus avoiding any jurisdictional problems. Continental and Texas Eastern, however, merely filed supplements to their petitions so as to include therein the opinion on rehearing. We conclude that this was sufficient to give this Court jurisdiction under 15 U.S.C. §717r(b).

whether the Commission has jurisdiction over these lease transactions.

Significant to the disposition of the instant case is the Supreme Court decision in *FPC* v. *Panhandle Eastern Pipe Line Co.*, 1949, 337 U.S. 498. Panhandle Eastern, the owner of a pipeline system transporting natural gas in interstate commerce, transferred gas leases to a subsidiary, Hugoton. In return, Panhandle received all the outstanding stock of Hugoton and after a certain period an option to purchase all of the gas produced from the land. At the time of the transfer the land was undeveloped[9] and not connected with any pipeline system. Hugoton thereafter contracted to sell that gas produced prior to the effective date of the option to a non-jurisdictional intrastate seller of natural gas. The gas leases transferred accounted for 12% of the gas reserves relied upon by Panhandle as the supply necessary to perform the services previously authorized by the Commission.

The Supreme Court held that the Commission did not have jurisdiction over the transfers of the leases. The Court based its decision on section 1(b) of the Natural Gas Act, which exempts "the production or gathering of natural gas" from Commission jurisdiction.[10] It concluded [fol. 1285] that this phrase includes "the producing properties and gathering facilities of a natural-gas company"[11] and "incidents connected with the production or gathering of gas."[12] The Court found that "of course leases are

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[9] See 337 U.S. at 500, 519.

[10] The Natural Gas Act §1(b), 15 U.S.C. §717(b), states:

"(b) The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

[11] 337 U.S. at 505.

[12] *Id.* at 506.

an essential part of production."[13] Thus it concluded that since the transfer of undeveloped gas leases is an activity related to the production and gathering of natural gas and beyond the coverage of the Act, the authority of the Commission cannot reach the sales."[14]

The Court was not persuaded by arguments that the gas leases had been dedicated to the discharge of Panhandle's public-utility obligation to render adequate service at reasonable and nondiscriminatory rates:

> "To accept these arguments springing from power to allow interstate service, fix rates, and control abandonment would establish wide control by the Federal Power Commission over the production and gathering of gas. It would invite expansion of power into other phases of the forbidden area. It would be an assumption of powers specifically denied the Commission by the words of the Act as explained in the report and on the floor of both Houses of Congress. The legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states. [fol. 1286] This probably occurred because the state legislatures, in the interests of conservation, had delegated broad and elaborate power to their regulatory bodies over all aspects of producing gas. The Natural Gas Act was designed to supplement state power and to produce a harmonious and comprehensive regulation of the industry. Neither state nor federal regulatory body was to encroach upon the jurisdiction of the other. Congress enacted this Act after full consideration of the problems of production and distribution. It considered the state interests as well as the national interest. It had both producers and consumers in mind. Legislative adjustments were made to reconcile the conflicting views."[15]

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[13] *Id.* at 505.

[14] *Id.* at 515.

[15] *Id.* at 509-13 (footnotes omitted).

It was noted that for over ten years the Commission had not claimed the right to regulate dealings in gas acreage. The Court concluded, "If the Commission is of the opinion that it should have power to control the disposition of leases by natural-gas companie. it is authorized to call the attention of Congress to that fa. "[16] It is significant that annually for the past twelve years the Commission has unsuccessfully asked Congress to grant it jurisdiction over the transfer of leaseholds by natural-gas companies.[17]

The Commission first argues that the "Lease Sale" transaction was in essence a sale of gas and thus does not come [fol. 1287] within the *Panhandle* decision. The Commission reasons that an ordinary oil and gas lease passes operating rights plus rights to the oil, gas, gas condensates, and other minerals. Using a mathematical analogy, it concludes that a "lease" which does not pass operating rights or rights to oil, gas condensates, or other minerals is merely a sale of gas. The Commission relies on five features of these contracts to show that they are in reality sales of gas: (1) the leases assigned gas rights only, and then only above a particular strata; (2) the assignors retained a production payment on natural gas (plant) liquids and separator liquids; (3) the notes for the deferred balance of payments could be accelerated by production in excess of a stated amount over each installment period; (4) Continental (only) operates all of the assigned properties by contract from Texas Eastern on a cost-plus fee basis, with costs recoverable out of the separator liquid proceeds before the production payment is determined; (5) Texas Eastern took the properties from its subsidiary, Louisiana Gas,[18] subject to the debt, but is not personally liable thereon.

We disagree with the Commission's interpretation of the transaction. The "Assignment and Conveyance" not only passed rights to the gas, but also passed rights to wells and related production equipment and rights of

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[16] *Id.* at 515-16.

[17] See Texas Eastern Transmission Corp., Opinion No. 378-A, 30 F.P.C. ——, n. 1 (1963) (dissenting opinion).

[18] See note 2, *supra*.

ingress and egress. The assignors retained no operating rights. Although Texas Eastern entered into a management agreement with Continental, this agreement did not change the essential nature of the transaction. The man- [fol. 1288] agement agreement stated that the reason for its execution was Continental's experience in operating and managing gas properties in or near Rayne Field, which has an extremely high pressure in its reservoirs. The agreement provided that, "Gathering, handling, separating, treating and storing of the production, the sale thereof and payment therefor shall not be included in this delegation of authority, such operating rights and duties to be performed by Louisiana Gas [Texas Eastern], its successors and assigns." The agreement further retained in Texas Eastern the right to decide whether and where wells would be drilled or deepened, whether secondary recovery or recycling operations would be conducted, and what volume of gas would be nominated for production each month.

We are concerned here only with whether these transfers were "leases" as that term was used in *Panhandle*. Since *Panhandle* held that "leases" relate to the production or gathering of natural gas and are thus outside Commission jurisdiction, it is clear that any "lease" transfer passing substantial rights which are related to production and gathering, as do the "leases" in the instant case, would likewise be outside Commission jurisdiction. We see no significance in the fact that the leases pertained only to gas and were limited to gas found above a certain depth.[19] Nor do we see anything unusual about the reservation of a [fol. 1289] production payment out of the proceeds from sales of natural gas liquids.[20] The provision for accelerated payment of the purchase-money notes in case of increased production was merely a method of protecting the assignor's collateral security; there were no provisions for decelerated payments in case of decreased production. As

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[19] *Cf.* 3 Summers, Oil & Gas 603, 614 (Perm. ed. 1958); 2 Williams & Meyers, Oil & Gas 269; Merrill, *The Oil and Gas Lease—Major Problems*, 4 Neb.L.Rev. 488, 528, 531 (1962).

[20] *Cf.* Bryan, *Overriding Royalty Under Oil, Gas and Mineral Leases in Louisiana*, 29 Tul.L.Rev. 340 (1954).

already noted, the Management Agreement retained a number of controls in Texas Eastern. Such agreements are not an uncommon practice.[21]

The Commission argues that in light of *Phillips Petroleum Co.* v. *Wisconsin*, 1954, 347 U.S. 672, the *Panhandle* case is not a bar to jurisdiction in the instant case. *Phillips* held that sales of gas by producers in interstate commerce for resale are within the Commission's jurisdiction. It is contended here that, since Texas Eastern intended at the time of the transfer of the leases to send the gas produced therefrom into interstate commerce for resale, the transfer is a jurisdictional one.

The *Panhandle* case, however, held that transfers of gas leases are exempt as an activity related to production and gathering. The Court in *Phillips* expressly recognized this holding,[22] but was there able to find jurisdiction because "production and gathering, in the sense that those terms are used in §1(b), end before the sales by Phillips occur."[23] This Court found jurisdiction for sales at well head in *Continental Oil Co.* v. *FPC*, 5 Cir. 1959, 266 F.2d [fol. 1290] 208, *cert. denied*, 361 U.S. 827 (1959), on the basis that such sales involved facilities for the sale of gas rather than facilities of production.[24] We recognized this distinction in *Deep South Oil Co.* v. *FPC*, 5 Cir. 1957, 247 F.2d 882, 889, *cert. denied*, 355 U.S. 930 (1958):

> "The exemption of production and gathering merely means that the *physical activities, facilities and properties* used by petitioner in the production and gathering of natural gas are not within the commission's power of regulation. However, there is nothing in the

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[21] See 3 Summers, Oil & Gas 708 (Perm. ed. 1958).

[22] 347 U.S. at 678.

[23] *Ibid.*

[24] *Accord*, J. M. Huber Corp. v. FPC, 3 Cir. 1956, 236 F.2d 550, 556, *cert. denied*, 352 U.S. 971 (1957), which distinguished *Panhandle* as involving the sale of gas leaseholds. *But cf.* Saturn Oil & Gas Co. v. FPC, 10 Cir. 1957, 250 F.2d 61, 68, *cert. denied*, 355 U.S. 956 (1958).

> Act which suggests, either expressly or by implication, that by the exemption of production and gathering, Congress intended that the wholesale sales of natural gas in interstate commerce which are consummated before the gas has been gathered or processed should not be regarded as sales in such commerce over which the Commission was granted exclusive jurisdiction to regulate." (Emphasis added.)

We are bound by *Panhandle's* classification of leaseholds as being part of the "physical activities, facilities and properties" used in production and gathering. Sales at or near well head, however, are another matter. As stated in *FPC* v. *J. M. Huber Corp.*, D. N.J. 1955, 133 F.Supp. 479, 484, *aff'd*, 236 F.2d 550 (3 Cir. 1956), *cert. denied*, 352 U.S. 971 (1957):

> [fol. 1291] "To say that the Commission has no authority over the real property interests a natural gas company acquires or relinquishes has little relevancy to a decision on jurisdiction over a sale at a point where production and gathering have ceased. In this case Huber has not attempted to sell or dispose of its interest in its gas wells, but rather seeks to terminate the flow of the product of the wells—the gas."

Thus, we conclude that the lease transactions in the instant cases are outside the Commission's jurisdiction. The Commission complains that this will leave a "gap" in its regulatory powers. Fifteen years ago the Supreme Court in *Panhandle* authorized the Commission to bring this to the attention of Congress,[25] and the Commission has repeatedly done so. If in its wisdom Congress has declined to act, we have neither the power nor the inclination to act in its stead.

Our decision as to jurisdiction makes unnecessary any determination of such questions as whether the D.C. Circuit opinion was binding on the Commission as "the law of the case." As to Texas Eastern's application, we are of

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[25] 337 U.S. at 515-16.

the opinion that it should be remanded to the Commission to determine whether the public convenience and necessity require that the certificate be denied, granted, or granted conditionally, in view of the cost of acquisition. We note with regret that this is essentially what the D.C. Circuit told the Commission to do three and one-half years ago.

[fol. 1292] The orders are reversed and remanded for further proceedings not inconsistent with the opinion of this Court.

Reversed and Remanded.

[fol. 1293]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 20560

M. H. MARR, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 20564

SUN OIL COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 20582

CONTINENTAL OIL COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 20587

GENERAL CRUDE OIL COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

[fol. 1294]

No. 20829

SUN OIL COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 20846

M. H. MARR, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 20847

GENERAL CRUDE OIL COMPANY, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

No. 20591

TEXAS EASTERN TRANSMISSION CORPORATION, Petitioner,

versus

FEDERAL POWER COMMISSION, Respondent.

[fol. 1295]

On Petitions for Review of Orders of the Federal Power Commission

Before Rives and Brown, Circuit Judges, and Grooms, District Judge.

JUDGMENT—August 3, 1964

This cause came to be heard on the petitions of the M. H. Marr, Sun Oil Company, Continental Oil Company, General Crude Oil Company, and Texas Eastern Transmission Corporation, for review of Orders of the Federal Power Commission issued on February 6, 1963, April 12, 1963, and July 12, 1963, in Docket Nos. G-12446, et al., and was argued by counsel;

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court that the Orders of the Federal Power Commission in these causes be and the same are hereby reversed; and that these causes be, and they are hereby remanded to the Commission for further proceedings not inconsistent with the opinion of this Court.

Issued as Mandate:

[fol. 1296]

SUPREME COURT OF THE UNITED STATES

No. .....—October Term, 1964

FEDERAL POWER COMMISSION, Petitioner,

vs.

M. H. MARR, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—November 2, 1964

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled case be, and the same is hereby, extended to and including November 16th, 1964.

Hugo S. Black, Associate Justice of the Supreme Court of the United States.

Dated this 2nd day of November, 1964.

[fol. 1297]

SUPREME COURT OF THE UNITED STATES

No. 644—October Term, 1964

THE UNITED GAS IMPROVEMENT COMPANY, Petitioner,

vs.

CONTINENTAL OIL COMPANY, ET AL.

ORDER ALLOWING CERTIORARI—January 18, 1965

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is consolidated with No. 693 and a total of two hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 1298]

SUPREME COURT OF THE UNITED STATES

No. 693—October Term, 1964

FEDERAL POWER COMMISSION, Petitioner,

vs.

M. H. MARR, ET AL.

ORDER ALLOWING CERTIORARI—January 18, 1965.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is consolidated with No. 644 and a total of two hours is allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office-Supreme Court, U.S.
FILED
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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1964.

No. 644

THE UNITED GAS IMPROVEMENT COMPANY,
Petitioner,

v.

CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, M. H. MARR, SUN OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

WILLIAM T. COLEMAN, JR.,
ROBERT W. MARIS,
2635 Fidelity-Philadelphia Trust Bldg.,
Philadelphia, Pennsylvania 19101,
Attorneys for Petitioner, The United Gas Improvement Company.

Of Counsel:
RICHARDSON DILWORTH,
HAROLD E. KOHN,
DILWORTH, PAXSON, KALISH, KOHN & DILKS,
2635 Fidelity-Philadelphia Trust Bldg.,
Philadelphia, Pennsylvania 19101.

International, 711 So. 50th St., Phila., Pa. 19143

STATUTES AND AUTHORITIES CITED.

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Natural Gas Act, 52 Stat. 822 (1938), as amended:	
Section 1(b), 15 U. S. C. § 717(b)	3, 4, 12, 13, 15, 18
Section 4, 15 U. S. C. § 717(c)	14
Section 5, 15 U. S. C. § 717(d)	14
Section 7, 15 U. S. C. § 717(f)	3
Section 19(b), 15 U. S. C. § 717r(b)	4
28 U. S. C. § 1254(1)	2



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1964

No.

THE UNITED GAS IMPROVEMENT COMPANY,
Petitioner,

v.

CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, M. H. MARR, SUN OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Petitioner, The United Gas Improvement Company, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on August 3, 1964, which reversed certain orders of the Federal Power Commission. Petitioner is informed that the Solicitor General of the United States is filing on behalf of the Federal Power Commission a petition likewise seeking reversal of the same judgment.

OPINIONS BELOW.

The Opinion of the Court of Appeals for the Fifth Circuit is not yet reported. It is reprinted in Appendix A hereto, *infra* pages 1a-14a. The Opinions and Orders of the Federal Power Commission which were reviewed by the Court of Appeals are reported at 29 FPC 249, 29 FPC 692, and 30 FPC 153 (1964), and are reprinted in the Joint Appendix prepared for the Court of Appeals, copies of which have been deposited with this Court by the Solicitor General of the United States (R. 962-84, 1136-39 and 1223-33).

JURISDICTION.

The judgment of the Court of Appeals was entered on August 3, 1964. Jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1) and Section 19(b) of the Natural Gas Act, 15 U. S. C. § 717r(b).

QUESTIONS PRESENTED.

Producer-respondents in 1957 entered into conventional sales contracts with pipeline-respondent at "out-of-line" initial price levels which, under then-existing Federal Power Commission precedent, were not subject to regulatory scrutiny under Section 7 of the Act. When the Courts overturned this Commission precedent and held initial price to be subject to effective regulation under Section 7 of the Act, producer-respondents recast their sales transaction with pipeline-respondent into a new form: bulk sale of the gas reserves in place for a lump sum adjusted based upon actual volumes of gas. The Commission found this sale to have the same effect as the originally planned sales, to be actually a sale of gas for resale in interstate commerce, and to be subject to effective price regulation. This Commission determination was reversed by the Court of Appeals. The questions presented therefore are:

(1) Can effective regulation of a sale of gas for resale in interstate commerce by producer-respondents be avoided, and the exemption in Section 1(b) of the Natural Gas Act be invoked at the discretion of the parties, merely by labelling the transaction a transfer of lease when it was actually a sale of gas for resale?

(2) Did the Court of Appeals err in upsetting the Commission's finding that the bulk sale of fully-developed gas reserves was a sale for resale in interstate commerce, and not a mere transfer of leases, since there is evidence in the record to support such Commission findings?

(3) Did the Court of Appeals err in upsetting the Commission's finding that effective regulation of the subject gas sale transaction could not be accomplished where the producer-respondents transferred the gas in bulk?

STATUTE INVOLVED.

The statutory provisions involved are contained in Sections 1(b) and 19(b) of the Natural Gas Act, 52 Stat. 822 (1938), as amended, 15 U. S. C. §§ 717(b), 717r(b). The statutory language in these sections relied on herein is as follows:

"NECESSITY FOR REGULATION OF NATURAL-GAS COMPANIES

Section 1. . . . (b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

* * *

REHEARING; COURT REVIEW OF ORDERS

Section 19 . . . (b) . . . The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. . . ."

STATEMENT OF THE CASE.

On February 1, 1957, the four producer-respondents, Continental Oil Company, General Crude Oil Company, M. H. Marr and Sun Oil Company, executed sales contracts with the pipeline-respondent, Texas Eastern Transmission Corporation (Texas Eastern), an interstate pipeline running from the Gulf area to the Eastern seaboard, covering sales of gas from wells drilled by them in the fully developed Rayne Field in South Louisiana. These contracts called for initial prices of 23.9¢ per Mcf including tax reimbursement. Shortly thereafter, Texas Eastern filed application for a certificate of public convenience and necessity to construct a short connecting line to the Rayne Field to take the gas and the four producer-respondents also filed applications for certification of the sales of gas to Texas Eastern.

These related applications were set for hearing, and Petitioner, The United Gas Improvement Company,[1] together with other distributors on the Eastern seaboard, all of which purchase substantial quantities of natural gas from Texas Eastern for resale to consumers, and the Public Service Commission of New York, intervened. This intervention was prompted by the fact that the initial price of 23.9¢ per Mcf proposed for these sales was the highest price up to that time sought in South Louisiana. Hearings were held and the Examiner entered an Order, over the protest of intervenors, recommending unconditional certification of the applications. In so ruling the Examiner was applying the then-existing Commission precedent that the Natural Gas Act and the public interest required no scru-

1. Under an agreement with the City of Philadelphia, The United Gas Improvement Company operates the municipally-owned Philadelphia Gas Works and related facilities. The gas works distributes 1035 Btu natural gas to some 600,000 customers in the City of Philadelphia.

tiny of initial prices as a prerequisite to certification of producer sales under Section 7 of the Act.

While the matter was pending before the Commission on exceptions by Petitioner and others to the Examiner's decision, the Court of Appeals for the Third Circuit decided the "Catco" case, reversing an order of the Commission granting unconditional certification of gas sales by the CATC producers (which include Continental Oil Company) from certain off-shore Louisiana fields at an initial price of 22.4¢ per Mcf, including tax. *Public Service Comm'n v. FPC*, 257 F. 2d 717 (3rd Cir. 1958), *aff'd sub nom. Atlantic Ref. Co. v. Public Service Comm'n*, 360 U. S. 378.

Thereafter the producer-respondents, apparently seeing the "handwriting on the wall" (R. 1017), entered into further negotiations with Texas Eastern, and three of the respondents filed notice of the termination of their gas sales contracts, and withdrawal of their certificate applications was granted.[2] Texas Eastern then filed a motion to reopen the hearing and amend its original certificate application to modify in a minor way the design of certain facilities and to reflect a most dramatic change in the method of the sale of the Rayne Field gas. Instead of the earlier normal per Mcf purchase from the four producer-respondents, Texas Eastern proposed to buy for a single lump sum, adjusted, however, to the actual volume, the known reserves formerly committed to the rescinded contracts, which acquisition outwardly was described as a transfer of lease.

To effectuate this lease sale agreement Texas Eastern organized a wholly-owned subsidiary, Louisiana Gas Corporation (R. 441), through which it entered into new agreements with the producer-respondents on December 4, 1958. By an agreement of the same date pipeline-respondent, Texas Eastern purchased from Louisiana Gas the interests

2. The fourth, Continental, did not apply for withdrawal until later. Grant of withdrawal to it was made as part of the first Commission Opinion herein, which was subsequently vacated.

Louisiana Gas had acquired from producer-respondents, without assuming any obligation to pay the producer-respondents.

The consideration for the conveyance was $134,395,700.00, of which $12,420,500.00 was paid in cash and the balance in promissory notes. These notes provided that should Texas Eastern determine that gas production should exceed a specified amount, payment of the notes would be accelerated (in inverse order of maturity), under a formula geared to a stipulated quantity of gas production.

At the reopened proceeding dealing with Texas Eastern's altered application the Commission omitted the intermediate decision procedure and on June 23, 1959, issued its Opinion No. 322 (R. 449-67, 21 F. P. C. 860), which unconditionally certificated Texas Eastern's proposal and in language and tenor appeared to confer general approval upon the terms of the acquisition arrangement, including price.

The New York Commission applied for rehearing of Opinion 322, but, nonetheless, the producer-respondents and Texas Eastern four days thereafter completed the sale transaction and Texas Eastern began to receive Rayne Field gas.

The application for rehearing was denied and the New York Commission appealed to the Court of Appeals for the District of Columbia, which set aside the certificate order. *Public Service Comm'n v. FPC*, 287 F. 2d 143 (D. C. Cir. 1960).

The court held that the Commission's opinion appeared to confer approval on the price of the acquisition without any substantial basis in the evidence. The court said:

> "It is of no importance here that the transactions by which Texas Eastern proposes to acquire the gas will themselves be, by virtue of a change in form, beyond the regulatory control of the Commission. The pipeline construction project and the transactions by which Texas Eastern will dispose of the gas thus ac-

quired clearly are within the Commission's jurisdiction. The relevance of Texas Eastern's acquisition costs to these matters is unaffected by the form of the transaction; the Commission's warrant to inquire arises by virtue of its responsibility to regulate the purchaser, regardless of the status of the seller.

Two courses are open to the Commission. It may, by clarification of the order presently under review, expressly disclaim any approval of the price to be paid for natural gas by the applicant. See Kansas Pipe Line and Gas Co., et al., supra note 4. Or it may reopen the record in the certificate proceeding to permit Texas Eastern to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity." *Id.* at 14.

On remand the Commission proceeded in accordance with the second suggestion of the court. At the reopened proceeding Texas Eastern undertook to present further evidence showing that its acquisition of this gas was made at a price consonant with the public convenience and necessity. This proved difficult since, as the Examiner found at the hearing's conclusion: "it appears virtually impossible, from the record, to determine the future costs to Texas Eastern for the Rayne Field since they are predicated upon assumptions and estimates" (R. 891-92). For this reason the Examiner issued the certificate to Texas Eastern upon the condition that Texas Eastern, in computing the costs for acquiring the Rayne Field gas, include a value for the gas no higher than 18.5¢ per Mcf.[3] The Examiner noted that Petitioner herein and the Commission Staff "vigorously contend in their briefs the Commission does have jurisdiction over such [Rayne Field gas] acquisitions" (R. 885)

3. This represented the Examiner's finding as to the "in line" going rate for gas in South Louisiana at the time the present transaction was entered into.

as it had over their predecessor sales. However, he concluded that the Commission had not retained such jurisdiction (R. 887). Petitioner, Texas Eastern and the Commission Staff filed exceptions. On February 6, 1963, the Commission issued its Opinion No. 378 deciding several important issues. Foremost, after considering the question, raised by the exceptions of Petitioner and Staff, of its jurisdiction over the sale of gas involved, the Commission found the following facts:

> "(1) Only gas in particular strata is conveyed; and the producers retain their interest in oil and other minerals;
>
> (2) In effect the transaction is for the sale of stripped gas inasmuch as the producers are to receive a production payment from Texas Eastern from the sale of natural gas liquids;
>
> (3) While the payment for the leases is represented by notes and spread over a 16-year period, the notes have an acceleration clause by which payment is accelerated if production is increased, so that Texas Eastern's payments would be geared to production;
>
> (4) By a management agreement dated July 27, 1959, Continental agrees to operate the field, including drilling wells and managing all wells and equipment, and to deliver to Texas Eastern specified minimum daily quantities of gas; Texas Eastern will reimburse Continental for its expenses in operating the field but the assignment of the leases shows that the costs of operating the leases will be defrayed out of the production payments to which Continental is entitled;
>
> (5) It is Louisiana Gas, not Texas Eastern which is liable on the notes to the producers, so that the true purchaser of the gas is not bound by the principal obligation of the lease sale transaction." (R. 973)

Based on these findings it concluded that in effect and in substance producer-respondents had consummated a sale of gas to pipeline-respondent, Texas Eastern, and nothing else. Since the gas acquired by Texas Eastern could only flow, and was in fact flowing, in interstate commerce and the price paid therefor had an impact only upon the price of gas in interstate commerce, which Congress intended to be regulated nationally under the Natural Gas Act, the Commission correctly held that the sale was subject to its jurisdiction.

As the inevitable consequence of this holding, the Commission further held that certification of such a jurisdictional sale was required. However, based on the facts of record and its experience in two hearings of the issues in the present case, the Commission concluded that it would not be in the public interest to certificate the sale in its existing bulk form. It therefore deferred final decision on the public convenience and necessity issues before it and offered the interested parties an opportunity to recast the transaction in another form, while retaining the substance for ultimate regulatory scrutiny by the Commission.

All the producer-respondents and the pipeline-respondent, Texas Eastern, filed petitions for rehearing which were denied, upon which they petitioned the Court of Appeals for the Fifth Circuit for review.

On August 3, 1964, that court reversed the Commission's jurisdictional finding and remanded the case to the Commission for further hearing and consideration of Texas Eastern's application alone. In the course of its opinion the Court examined the "Assignment and Conveyance" between the producer-respondents and Texas Eastern and disagreed with the Commission's factual finding that the document embodied a sale of gas. Instead it found that the documents were "leases," and therefore within the "production and gathering" exemption contained in Section 1(b) of the Act. Because of this conclusion it found no occasion to pass on the Commission's holding that the bulk transfer, in any event, was not in the public interest.

REASONS FOR GRANTING THE WRIT.

1. The Decision of the Court Below Fundamentally Undermines This Court's Decision in *Phillips Petroleum Company v. Wisconsin* That Sales by Independent Producers of Natural Gas Are Subject to Regulation and Thus Provides a Method for Complete Avoidance of Such Regulation. It Therefore Represents a Serious Threat to Producer Price Regulation Under the Natural Gas Act.

In its decision in *Phillips Petroleum Company v. Wisconsin,* 347 U. S. 672, this Court held that the Federal Power Commission has, and, indeed, must exercise, jurisdiction to regulate sales of natural gas in interstate commerce, "whether occurring before, during or after transmission by an interstate pipeline company." *Id.* at 682. It would not be an exaggeration to say that implementation of this decision by the Federal Power Commission has been strongly resisted by independent producers of natural gas. Moreover, in the years immediately following *Phillips* the effect of the decision was largely nullified. Though a producer's overall rate structure was potentially subject to regulation under Sections 4 and 5 of the Act, in practice proceedings under these Sections were "nigh interminable," as this Court has recognized, *Atlantic Ref. Co. v. Public Service Comm'n,* 360 U. S. 378, and never reached the stage of effective regulation. With the "evil day," *Wisconsin v. FPC,* 373 U. S. 294, 324 n. 8, thus postponed the independent producer could reap undisturbed the benefits of steeply ascending prices, since it was at that time Commission policy to certificate all new applications under Section 7 of the Act to make sales, regardless of the level of the price proposed, so long as arm's-length bargaining was shown. *E.g., Anthony J. Tamborello,* 15 F. P. C. 1 (1956); *Transcontinental Gas*

Pipe Line Co., 20 F. P. C. 264 (1958), *aff'd sub nom. UGI v. FPC*, 269 F. 2d 865 (3d Cir. 1959), *reversed*, 361 U. S. 195.

This *laissez-faire* policy was strongly protested, however, by Petitioner and other intervenors, before the Commission and eventually before the courts. *E.g., UGI v. FPC, supra.* Producers could hardly have been surprised, therefore, when the Third Circuit in 1958 reversed the unconditional certification of 22.4¢ per Mcf prices for sales from off-shore Louisiana. *Public Service Comm'n v. FPC*, 257 F. 2d 717 (3d Cir. 1958) (*Catco*). On appeal from that decision this Court was unequivocal in pointing out the Commission's error in failing to afford full consumer protection through proper regulation of initial price. *Atlantic Ref. Co. v. Public Service Comm'n, supra.* It was then clear to the producer that regulation was thenceforth to be made effective from the initiation of service. This resulted in producer's counteraction, and the producer-respondents herein took the lead (See R. 1016-18).

A decision of this Court in 1949, *FPC v. Panhandle Eastern Pipe Line Company*, 337 U. S. 498, had held the Commission lacked jurisdiction to enjoin the alienation by a pipeline of certain gas leases, because leases are related to production and production of natural gas is specifically exempted from jurisdiction by Section 1(b) of the Act. Given such a decision, it might well have occurred to a producer that jurisdiction might be avoided by changing a contract for long term delivery on a per Mcf basis of specific committed gas reserves into a "one-shot" sale of all the specific committed reserves for a fixed price (cast in the form of a sale of the leases under state law). In any event producer-respondents herein negotiated just such an arrangement with pipeline-respondent, and proceeded as if the transaction were not subject to regulation.

In its Opinion 322 (R. 449-67; 21 F. P. C. 860) the FPC, as then constituted, appeared to give its hearty sanction to such a transaction. Emboldened by this precedent, a number of other major producers or groups of cooperating

producers arranged similar transactions for some of the major outstanding reserves of gas in both South Louisiana and Texas. *E.g., Tennessee Gas Transmission Co., et al.,* Docket G-14562, *et al.* (Blocks 46 & 64, So. La.); *Tennessee Gas Transmission Co., et al.,* Docket CP 61-106, *et al.* (Bastian Bay, So. La.); *Monterey Gas Trans., et al.,* Docket CP 62-88, *et al.* (King Ranch, Texas); *Continental Oil Co., et al.,* Docket RI 64-129 (Ship Shoal, So. La.). The trend therefore was unmistakable, but happily premature. Opinion 322 (which on its face purported to deal solely with Texas Eastern's minor expansion of facilities) was reversed by the Court of Appeals for the District of Columbia. *Public Service Comm'n v. FPC,* 287 F. 2d 143 (D. C. Cir. 1960).

At the reopened hearings Petitioner and Staff counsel, taking note of the growing popularity of "nonjurisdictional" lease sale deals, urged the Commission to consider the real issue before it—not Texas Eastern's purchased gas costs, but the public interest price for a sale of gas by the producers. The Commission found that it did have jurisdiction over the sale.

The Court of Appeals below reversed the Commission on the broad ground that, although gas was sold, the lease form of the transaction brought it within the holding of the *Panhandle* case and therefore within the "production or gathering" exemption in Section 1(b) of the Act. In effect the court below opened again the avenue of escape from regulation which producers thought they had found after the Commission handed down its Opinion 322.

That avenue is different from a "gap" in regulatory coverage. It is a method by which sales from substantial reserves by producers in interstate commerce, which are clearly subject to regulation, may at the discretion of the parties be converted by contract into "non-jurisdictional" transactions subject to no regulation. The "avenue" runs, like a Hausmann boulevard, squarely through the middle of this Court's first *Phillips* decision. The decision of the court below is one of extraordinary importance because it

avoids not only this Court's decision in *Catco* (which may have been the original purpose of the lease transaction herein) but, most important, that in *Phillips*. If the decision below stands, regulation of "lease sales" could only be accomplished indirectly in pipeline rate cases, a method which this Court has noted does not fully protect the ultimate consumer. *E.g., Interstate Natural Gas Co. v. FPC*, 331 U. S. 682, 692-93. Under the decision of the court below the cost to the producer-respondents of developing the gas to be taken into Texas Eastern's system is subject neither to initial scrutiny nor to any later rate proceeding under Sections 4 or 5.

This would indeed offer an attractive prospect to the independent producer. The only remaining question would be whether such "lease sales" would be generally economically feasible. It seems certain that they would be. The bulk of the large gas reserves in the United States are in the hands of large integrated petroleum companies. Small producers, those with sales of under 10 million Mcf per year, have little or no impact on the market. See, Presiding Examiner's "Initial Decision on Permiam Area Rates," issued Sept. 17, 1964, in Docket AR 61-1 (first area rate proceeding), at mimeo pp. 153-51. The pipelines with which the major producers deal are in most cases enormous, diversified corporations commanding virtually unlimited borrowing power. Thus, these parties possess the resources to make such transactions, a situation which did not exist in the early days of the industry, and under the broad holding of the court below they would have every legal justification necessary to do so. Therefore, if the decision below stands, *Phillips* and *Catco*, and a major part of the Natural Gas Act, are deadletters as to large blocks of gas.

2. The Decision Below Is in Conflict With a Decision of the Court of Appeals for the Tenth Circuit.

The narrow legal question presented in the present case involves the scope of the basic and affirmative grant

of jurisidction over "the sale in interstate commerce of natural gas for resale" contained in Section 1(b) of the Natural Gas Act and the counterscope of the exemption from jurisdiction accorded therein to "the production or gathering of natural gas."

This Court in *Phillips Petroleum Co. v. Wisconsin*, 347 U. S. 672, gave the basic and affirmative grant of Commission jurisdiction the broad construction which the purpose of the Act requires. However, because the specific facts in the *Phillips* case involved a sale made after "production and gathering" were completed, there followed controversy as to the extent of the barrier, if any, raised by the exemption against the basic grant.

Depending on whether prime emphasis was attached to the precise facts presented in the *Phillips* case or to the broad language used in the dictum of this Court's opinion, arguments were made for either of the possible interpretations of that decision: that jurisdiction is limited to the sale of natural gas at the tailgate of the processing plant—the point where the natural gas enters the interstate pipeline—or, in the alternative, that jurisdiction extends to the point of the first sale of natural gas for resale, wherever that may be, if interstate commerce turns out ultimately to be involved.

The Commission, moreover, has always taken the broad view of the basic grant, and has been uniformly sustained by the courts—until the decision of the court below. See *J. M. Huber v. FPC*, 236 F. 2d 550 (3d Cir. 1956), *cert. denied*, 352 U. S. 971; *Deep South Oil Co. v. FPC*, 247 F. 2d 882 (5th Cir. 1958); *cert. denied, sub nom. Humble Oil & Ref. Co. v. FPC*, 355 U. S. 930; *Continental Oil Co. v. FPC*, 266 F. 2d 208 (5th Cir. 1959), *cert. denied*, 361 U. S. 827. The most significant post-*Phillips* case dealing with this precise issue is *Saturn Oil & Gas Co. v. FPC*, 250 F. 2d 61 (10th Cir. 1957), *cert. denied*, 355 U. S. 956. In that case the producer made its sale at the mouth of the "Christmas

tree."[4] It owned no pipe. The court found that the sale was made "prior to gathering," *Id.* at 64. Nonetheless, it held that the basic grant of jurisdiction prevailed over the gathering exemption, under the rationale of this Court's *Phillips* decision. It said:

> "In the final analysis the question resolves itself into a determination of whether the Phillips decision is to be viewed in the light of its precise facts or in the light of the broad language of the court. We are convinced that the court with full recognition of the precise facts, which it detailed in its opinion, carefully refrained from basing its decision on the inapplicability of the exemption and held that the production or gathering exemption of section 1(b) did not apply to exclude from the jurisdiction of the Commission sales by any producer of natural gas for transportation interstate for resale to the public. We are bound by the Phillips decision."

In direct conflict with the decision just quoted, the court below gave no weight to the fact that the producer respondents in fact sold specific known reserves of gas to Texas Eastern for transportation and resale in interstate commerce. Instead, finding certain attributes of a lease transaction to be present in the transaction by which the gas was transferred from the producers to the pipeline, it gave broad and controlling effect to the "production and gathering" exemption and held the sale of gas to be beyond regulation. The far-reaching consequences of the decision are outlined as the first reason herein for granting the writ. The specific erroneous legal conclusion is in direct conflict with that reached by the Court of Appeals for the Tenth Circuit in the *Saturn* case, and the conflict can only be resolved by this Court. The very important

4. The Court accepted the definition of "Christmas tree" as "the assembly of valves, pipes, and fittings used to control the flow of oil and gas from the casing head."

legal question involved—the effect of the confrontation of the basic grant and the exemption—has application far beyond lease transactions. The proper exercise by the Commission of its jurisdiction and the protection of the consumer therefore demand the guidance of an opinion from this Court.

3. The Decision Below Misconstrues This Court's Decision in *FPC v. Panhandle* in Such a Way as to Make It Conflict With This Court's Later Decision in *Phillips Petroleum v. Wisconsin.*

The decision of this Court in *FPC v. Panhandle Eastern Pipe Line Co.*, 337 U. S. 498, dealt with the alienation by an interstate pipeline of a large block of gas leases covering undeveloped land. The transfer was to a producing affiliate of the pipeline, which was bound by contract to develop the leases and sell the gas therefrom entirely in the *intrastate* market in Kansas.

The Commission believed that the alienation of the potential reserve represented by those leases would seriously impair the ability of the interstate pipeline to perform in accordance with its certificate of public convenience and necessity, which had been based in part upon those very reserves. Therefore the Commission ordered a hearing into the effect of the lease transfer. However, the date for transfer of the leases was approaching and, to preserve the status quo, the Commission asked a United States District Court to restrain temporarily the pipeline company from completing the transaction until after the Commission had completed its legitimate investigation.

The District Court refused the restraining order and was affirmed by the Court of Appeals on the ground that the Commission lacked jurisdiction over the transfer of the lease. This Court also affirmed. The jurisdictional issue turned on (1) whether or not a company's interest in gas leases was included within the specific exemption of "pro-

duction or gathering", and (2) if leases were within the exemption, whether the need of the Commission to protect its clear jurisdiction over an interstate pipeline was intended to prevail over the policy of the exemption. In its opinion this Court answered "yes" to the first issue and "no" to the second.

The present case, in contrast to *Panhandle*, involved a transfer of fully developed leases from producers to an interstate pipeline, where the gas to be extracted under the lease was intended to flow entirely in *interstate* commerce. In the present case the Commission found a sale of gas in interstate commerce, whereas in *Panhandle* no such finding was sought or made, nor could it have been, since all the gas involved was committed by contract to intrastate commerce. As noted, *Panhandle* presented an issue of the scope of the Commission's "protective" jurisdiction. It presented no confrontation—as did the subsequent *Phillips* case and the present case—between the basic grant of jurisdiction over sales in Section 1(b) and the exemption contained in the same Section.

When this Court *has* been presented with such a direct confrontation, it has construed the basic grant broadly and the exemption narrowly, as Congress intended. *Interstate Natural Gas Co. v. FPC*, 331 U. S. 682, 691; *Phillips Petroleum Corp. v. Wisconsin, supra.* The Courts of Appeals, including the Fifth Circuit prior to the decision below, have followed this Court in that interpretation of the two provisions. See cases cited *supra*, p. 15.

Ignoring this distinction between the basic issues involved in *Panhandle* and *Phillips*, the court below read *Panhandle* as creating an inviolable circle of exemption for any natural gas transaction which might be cast by the parties in the form of a lease transaction. By this extremely formalistic reliance upon appearance over effect, the court below extended the holding of *Panhandle* into an area never contemplated in this Court's decision in that case—the area of sales in interstate commerce. By so

doing, the court below brings the *Panhandle* decision into direct collision with this Court's subsequent *Phillips* decision, as discussed under the first reason for granting the writ.

This misconstruction and extension of the *Panhandle* decision can only be cured and clarified by this Court. If it is permitted to stand it can only create increasing uncertainty as to jurisdiction in areas other than lease transactions, wherever a sale in interstate commerce is made as an intimate adjunct of the processes of production and gathering.

CONCLUSION.

For the foregoing reasons it is urged that this petition for a writ of certiorari be granted.

Respectfully submitted,

WILLIAM T. COLEMAN, JR.,
ROBERT W. MARIS,
2635 Fidelity-Philadelphia Trust Bldg.,
Philadelphia, Pennsylvania 19101,
Attorneys for Petitioner, The United Gas Improvement Company.

Of Counsel:

RICHARDSON DILWORTH,
HAROLD E. KOHN,
DILWORTH, PAXSON, KALISH, KOHN & DILKS,
2635 Fidelity-Philadelphia Trust Bldg.,
Philadelphia, Pennsylvania 19101.

Dated: October 30, 1964



APPENDIX A.

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 20560

M. H. MARR,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

No. 20564

SUN OIL COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

No. 20582

CONTINENTAL OIL COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

Appendix A

No. 20587

GENERAL CRUDE OIL COMPANY,
Petitioner

v.

FEDERAL POWER COMMISSION,
Respondent.

No. 20829

SUN OIL COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

No. 20846

M. H. MARR,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

No. 20847

GENERAL CRUDE OIL COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

No. 20591

TEXAS EASTERN TRANSMISSION CORPORATION,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

Petitions for Review of Orders of the Federal Power Commission.

(August 3, 1964.)

Before RIVES and BROWN, Circuit Judges, and GROOMS, District Judge.

RIVES, Circuit Judge: These are petitions to review certain opinions and orders of the Federal Power Commission pursuant to section 19(b) of the Natural Gas Act, 15 U.S.C. § 717r(b). The petitioners are M. H. Marr, Sun Oil Company, Continental Oil Company, General Crude Oil Company, and Texas Eastern Transmission Corporation. Unless otherwise noted, all of the petitioners with the exception of Texas Eastern will be referred to herein as "the assignors." The intervenors are the Public Service Commission of the State of New York, the United Gas Improvement Company, and the Public Service Electric and Gas Company.

In 1957 Texas Eastern, a natural-gas company owning and operating an interstate natural-gas transmission system, executed gas purchase contracts with the assignors to purchase their natural-gas production in the Rayne Field, Acadia Parish, Louisiana, at an initial price of 23.9¢ per

Mcf, including state taxes of 1.3¢ per Mcf.[1] At that time the assignors filed applications with the Federal Power Commission seeking certificates of public convenience and necessity for the gas sales, and Texas Eastern applied for a certificate to expand its interstate pipeline system in order to receive and re-sell the gas. These sales contracts, however, were cancelled in 1958 shortly after the Third Circuit decision in *Public Service Commission v. FPC*, 3 Cir. 1958; 257 F.2d 717, *aff'd sub nom. Atlantic Refining Co. v. PSC*, 1959, 360 U.S. 378 (popularly called CATCO), and the Commission permitted the assignors to withdraw their then pending certificate applications.

After the cancellation of the sales contracts, the assignors entered into agreements whereby they purported to assign or convey certain of their leasehold rights in the Rayne Field gas to Texas Eastern.[2] The Commission allowed Texas Eastern to amend its application so as to reflect the new agreements and in June 1959 unconditionally authorized the construction and operation of the proposed pipeline facilities. The opinion[3] approved the project without examining into the cost to Texas Eastern of the leasehold interests and noted that the Commission had no authority to issue a certificate directly authorizing the acquisition of the leases. The Public Service Commission of New York sought review of this order, and in *Public Service Comm'n v. FPC*, D.C. Cir. 1961, 287 F.2d 143, it was reversed and remanded by the District of Columbia Circuit. The court observed:

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1. Although a large, developed gas reserve, the Rayne Field gas as yet was not connected with any pipeline transporting natural gas in interstate commerce nor was it dedicated to any sale in interstate commerce.

2. The total purchase price was $134,395,700.00. The purchaser was actually Louisiana Gas Corporation, a wholly-owned subsidiary of Texas Eastern, which in turn assigned its interest to Texas Eastern. Unless otherwise noted, Texas Eastern will be treated as the purchaser.

3. Texas Eastern Transmission Corp., Opinion No. 322, 21 F.P.C. 860 (1959).

> "Sales of natural gas by an independent producer are subject to Commission regulation under Sections 4 and 5 of the Natural Gas Act. Phillips Petroleum Co. v. State of Wisconsin, 1954, 347 U.S. 672, 74 S.Ct. 794, 98 L.Ed. 1035. But the Commission has been held to lack jurisdiction over gas leases. Federal Power Commission v. Panhandle Eastern Pipe Line Co., 1949, 337 U.S. 498, 69 S.Ct. 1251, 93 L.Ed. 1499."[4]

Nevertheless, the court held that the Commission did have jurisdiction over the pipeline construction project and the transactions by which Texas Eastern would dispose of the gas, for the Commission has a responsibility to regulate the purchaser, "regardless of the status of the seller."[5] Taking into consideration the Supreme Court's decision in *CATCO, supra,* the court concluded that insofar as the Commission's order purported to pass favorably upon the pricing aspects of the gas lease acquisitions, it was unsupported by substantial evidence in the record. The court offered the Commission two options: (1) clarifying the order by disclaiming any approval of the purchase price, or (2) reopening the record to allow Texas Eastern to establish that the acquisition costs would be consistent with the public convenience and necessity. The Commission's order was reversed, and the matter remanded to the Commission for further proceedings not inconsistent with the opinion of the court.

On remand, the Commission chose to reopen the record. In these proceedings Commission counsel argued for the first time that the Commission had jurisdiction over the acquisition of the leases. The Examiner, however, rejected this contention.[6] Instead, he recommended that Texas

4. 287 F.2d at 145.

5. *Id.* at 146.

6. The Examiner's report stated:

"As far back as 1949, the Commission contended it had jurisdiction over the sale by Panhandle of certain leases and leasehold interests covering an estimated 12 per cent of the total gas reserves of

Eastern be issued a certificate of public convenience and necessity conditioned on its charging an initial, "in line" price of 18.5¢ per Mcf, exclusive of taxes, at 15.025 psia, and further conditioned on its maintaining supplemental accounts providing cost data.

Exceptions were filed, and in February 1963 the Commission issued Opinion No. 378, wherein it asserted jurisdiction over the lease transaction.[7] Looking to the "es-

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Panhandle but the Supreme Court in *F.P.C. v. Panhandle Eastern Pipe Line Company, et al.*, 377 U.S. 498, recognized and upheld the traditional industry practice of a natural gas company to buy and/or sell leases and leasehold interests which are '*not connected* with any pipeline system' (emphasis supplied) without the approval of the Commission. From this, it would appear, one of the prerequisites to Commission jurisdiction is that the natural gas under the leases or leasehold interests must first be connected to a pipeline system transporting natural gas in interstate commerce. The Commission argued before the D.C. Circuit, in the following case, it did not have jurisdiction over Texas Eastern's acquisition of the Rayne Field leases and leasehold interests and, in its opinion, the Court of Appeals, D.C. Circuit, in *Public Service Commission of the State of New York v. F.P.C.*, 287 F.2d 143, 145 said '. . . the Commission has been held to lack jurisdiction over gas leases' citing *F.P.C. v. Panhandle, supra.* It is contended in the briefs filed herein the Supreme Court reversed its decision in the *Panhandle* case, *supra*, by its decision in *Phillips Petroleum Co. v. Wisconsin, et al.*, 1954, 347 U.S. 672. Quite to the contrary. In *Phillips* the Supreme Court recognized and reaffirmed the Panhandle prerequisite of the gas being attached to an interstate system of pipelines before the Commission acquired jurisdiction. . . .

". . . [T]he natural gas under consideration by the Supreme Court in its *Phillips* opinion, *supra*, had *previously* been attached to, or *connected* with, an interstate system of pipelines and, because of this connection, the gas flowed in interstate commerce and thereby became subject to the jurisdiction of the Commission.

"In applying the principles of the *Panhandle* and *Phillips* opinions, *supra*, to the evidence of record in this hearing, it is concluded the Commission was without jurisdiction over the Rayne Field lease and leasehold acquisition and the natural gas under said leases and leaseholds by Texas Eastern until (1) the gas was connected to an interstate system of pipelines or (2) the gas was dedicated to a sale in interstate commerce."

7. Texas Eastern Transmission Corp., Opinion No. 378, 29 F.P.C. 249 (1963).

sence" of the transaction, the Commission concluded that it was a transfer of natural gas for resale in the interstate market and that such a transfer is subject to the Commission's jurisdiction even when it occurs during the course of production and gathering. The Commission declined to inquire into the cost data and delayed passing on Texas Eastern's certificate; instead, it commanded the assignors to file appropriate rate schedules and applications for certificates for the sale of the gas, to be effective retroactively. The assignors were allowed to file applications for rehearing, but on rehearing the Commission, with one Commissioner dissenting, reaffirmed its previous holding and noted that the failure of the assignors to file for certificates would result in their violating the act. The petitioners are seeking review of these opinions and the orders related thereto.[8] The principal question to be decided is whether the Commission has jurisdiction over these lease transactions.

Significant to the disposition of the instant case is the Supreme Court decision in *FPC v. Panhandle Eastern Pipe Line Co.*, 1949, 337 U.S. 498. Panhandle Eastern, the owner of a pipeline system transporting natural gas in interstate commerce, transferred gas leases to a subsidiary, Hugoton. In return, Panhandle received all the outstanding stock of Hugoton and after a certain period an option to purchase all of the gas produced from the land. At the time of the transfer the land was undeveloped[9] and not connected with any pipeline system. Hugoton thereafter contracted to sell that gas produced prior to the effective

8. The petitions which were filed in this Court for review of Opinion No. 378 (Nos. 20,560; 20,564; 20,582; 20,587 and 20,591) were filed while the applications for rehearing were still pending. After the opinion on rehearing was rendered, Marr, Sun and General Crude filed new petitions (Nos. 20,829; 20,846 and 20,847) seeking review of both opinions, thus avoiding any jurisdictional problems. Continental and Texas Eastern, however, merely filed supplements to their petitions so as to include therein the opinion on rehearing. We conclude that this was sufficient to give this Court jurisdiction under 15 U.S.C. § 717r(b).

9. See 337 U.S. at 500, 519.

date of the option to a non-jurisdictional intrastate seller of natural gas. The gas leases transferred accounted for 12% of the gas reserves relied upon by Panhandle as the supply necessary to perform the services previously authorized by the Commission.

The Supreme Court held that the Commission did not have jurisdiction over the transfers of the leases. The Court based its decision on section 1(b) of the Natural Gas Act, which exempts "the production or gathering of natural gas" from Commission jurisdiction.[10] It concluded that this phrase includes "the producing properties and gathering facilities of a natural-gas company"[11] and "incidents connected with the production or gathering of gas."[12] The Court found that "of course leases are an essential part of production."[13] Thus it concluded that since "the transfer of undeveloped gas leases is an activity related to the production and gathering of natural gas and beyond the coverage of the Act, the authority of the Commission cannot reach the sales."[14]

The Court was not persuaded by arguments that the gas leases had been dedicated to the discharge of Panhandle's public-utility obligation to render adequate service at reasonable and nondiscriminatory rates :

> "To accept these arguments springing from power to allow interstate service, fix rates, and control aban-

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10. The Natural Gas Act § 1(b), 15 U.S.C. § 717(b), states:

"(b) The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

11. 337 U.S. at 505.

12. *Id.* at 506.

13. *Id.* at 505.

14. *Id.* at 515.

donment would establish wide control by the Federal Power Commission over the production and gathering of gas. It would invite expansion of power into other phases of the forbidden area. It would be an assumption of powers specifically denied the Commission by the words of the Act as explained in the report and on the floor of both Houses of Congress. The legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states. This probably occurred because the state legislatures, in the interests of conservation, had delegated broad and elaborate power to their regulatory bodies over all aspects of producing gas. The Natural Gas Act was designed to supplement state power and to produce a harmonious and comprehensive regulation of the industry. Neither state nor federal regulatory body was to encroach upon the jurisdiction of the other. Congress enacted this Act after full consideration of the problems of production and distribution. It considered the state interests as well as the national interest. It had both producers and consumers in mind. Legislative adjustments were made to reconcile the conflicting views." [15]

It was noted that for over ten years the Commission had not claimed the right to regulate dealings in gas acreage. The Court concluded, "If the Commission is of the opinion that it should have power to control the disposition of leases by natural gas companies, it is authorized to call the attention of Congress to that fact." [16] It is significant that annually for the past twelve years the Commission has unsuccessfully asked Congress to grant it jurisdiction over the transfer of leaseholds by natural-gas companies.[17]

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15. *Id.* at 509-13 (footnotes omitted).

16. *Id.* at 515-16.

17. See Texas Eastern Transmission Corp., Opinion No. 378-A, 30 F.P.C. . . . , n. 1 (1963) (dissenting opinion).

The Commission first argues that the "Lease Sale" transaction was in essence a sale of gas and thus does not come within the *Panhandle* decision. The Commission reasons that an ordinary oil and gas lease passes operating rights plus rights to the oil, gas, gas condensates, and other minerals. Using a mathematical analogy, it concludes that a "lease" which does not pass operating rights or rights to oil, gas condensates, or other minerals is merely a sale of gas. The Commission relies on five features of these contracts to show that they are in reality sales of gas: (1) the leases assigned gas rights only, and then only above a particular strata; (2) the assignors retained a production payment on natural gas (plant) liquids and separator liquids; (3) the notes for the deferred balance of payments could be accelerated by production in excess of a stated amount over each installment period; (4) Continental (only) operates all of the assigned properties by contract from Texas Eastern on a cost-plus fee basis, with costs recoverable out of the separator liquid proceeds before the production payment is determined; (5) Texas Eastern took the properties from its subsidiary, Louisiana Gas,[18] subject to the debt, but is not personally liable thereon.

We disagree with the Commission's interpretation of the transaction. The "Assignment and Conveyance" not only passed rights to the gas, but also passed rights to wells and related production equipment and rights of ingress and egress. The assignors retained no operating rights. Although Texas Eastern entered into a management agreement with Continental, this agreement did not change the essential nature of the transaction. The management agreement stated that the reason for its execution was Continental's experience in operating and managing gas properties in or near Rayne Field, which has an extremely high pressure in its reservoirs. The agreement provided that, "Gathering, handling, separating, treating

18. See note 2, *supra*.

and storing of the production, the sale thereof and payment therefor shall not be included in this delegation of authority, such operating rights and duties to be performed by Louisiana Gas [Texas Eastern], its successors and assigns." The agreement further retained in Texas Eastern the right to decide whether and where wells would be drilled or deepened, whether secondary recovery or recycling operations would be conducted, and what volume of gas would be nominated for production each month.

We are concerned here only with whether these transfers were "leases" as that term was used in *Panhandle*. Since *Panhandle* held that "leases" relate to the production or gathering of natural gas and are thus outside Commission jurisdiction, it is clear that any "lease" transfer passing substantial rights which are related to production and gathering, as do the "leases" in the instant case, would likewise be outside Commission jurisdiction. We see no significance in the fact that the leases pertained only to gas and were limited to gas found above a certain depth.[19] Nor do we see anything unusual about the reservation of a production payment out of the proceeds from sales of natural gas liquids.[20] The provision for accelerated payment of the purchase-money notes in case of increased production was merely a method of protecting the assignor's collateral security; there were no provisions for decelerated payments in case of decreased production. As already noted, the Management Agreement retained a number of controls in Texas Eastern. Such agreements are not an uncommon practice.[21]

The Commission argues that in light of *Phillips Petroleum Co. v. Wisconsin*, 1954, 347 U.S. 672, the *Panhandle*

19. *Cf.* 3 Summers, Oil & Gas 603, 614 (Perm. ed. 1958); 2 Williams & Meyers, Oil & Gas 269; Merrill, *The Oil and Gas Lease—Major Problems*, 4 *Neb.L.Rev.* 488, 528, 531 (1962).

20. *Cf.* Bryan, *Overriding Royalty Under Oil, Gas and Mineral Leases in Louisiana*, 29 *Tul.L.Rev.* 340 (1954).

21. See 3 Summers, Oil & Gas 708 (Perm. ed. 1958).

case is not a bar to jurisdiction in the instant case. *Phillips* held that sales of gas by producers in interstate commerce for resale are within the Commission's jurisdiction. It is contended here that, since Texas Eastern intended at the time of the transfer of the leases to send the gas produced therefrom into interstate commerce for resale, the transfer is a jurisdictional one.

The *Panhandle* case, however, held that transfers of gas leases are exempt as an activity related to production and gathering. The Court in *Phillips* expressly recognized this holding,[22] but was there able to find jurisdiction because "production and gathering, in the sense that those terms are used in §.1(b), end before the sales by Phillips occur."[23] This Court found jurisdiction for sales at well head in *Continental Oil Co. v. FPC*, 5 Cir. 1959, 266 F.2d 208, *cert. denied*, 361 U.S. 827 (1959), on the basis that such sales involved facilities for the sale of gas rather than facilities of production.[24] We recognized this distinction in *Deep South Oil Co. v. FPC*, 5 Cir. 1957, 247 F.2d 882, 889, *cert. denied*, 355 U.S. 930 (1958):

> "The exemption of production and gathering merely means that the *physical activities, facilities and properties* used by petitioner in the production and gathering of natural gas are not within the commission's power of regulation. However, there is nothing in the Act which suggests, either expressly or by implication, that by the exemption of production and gathering, Congress intended that the wholesale sales of natural gas in interstate commerce which are consummated before the gas has been gathered or processed

22. 347 U.S. at 678.

23. *Ibid.*

24. *Accord*, J. M. Huber Corp. v. FPC, 3 Cir. 1956, 236 F.2d 550, 556, *cert. denied*, 352 U.S. 971 (1957), which distinguished *Panhandle* as involving the sale of gas leaseholds. *But cf.* Saturn Oil & Gas Co. v. FPC, 10 Cir. 1957, 250 F.2d 61, 68, *cert. denied*, 355 U.S. 956 (1958).

should not be regarded as sales in such commerce over which the Commission was granted exclusive jurisdiction to regulate." (Emphasis added.)

We are bound by *Panhandle's* classification of leaseholds as being part of the "physical activities, facilities and properties" used in production and gathering. Sales at or near well head, however, are another matter. As stated in *FPC v. J. M. Huber Corp.*; D. N.J. 1955, 133 F.Supp. 479, 484, *aff'd*, 236 F.2d 550 (3 Cir. 1956), *cert. denied*, 352 U.S. 971 (1957):

> "To say that the Commission has no authority over the real property interests a natural gas company acquires or relinquishes has little relevancy to a decision on jurisdiction over a sale at a point where production and gathering have ceased. In this case, Huber has not attempted to sell or dispose of its interest in its gas wells, but rather seeks to terminate the flow of the product of the wells—the gas."

Thus, we conclude that the lease transactions in the instant cases are outside the Commission's jurisdiction. The Commission complains that this will leave a "gap" in its regulatory powers. Fifteen years ago the Supreme Court in *Panhandle* authorized the Commission to bring this to the attention of Congress,[25] and the Commission has repeatedly done so. If in its wisdom Congress has declined to act, we have neither the power nor the inclination to act in its stead.

Our decision as to jurisdiction makes unnecessary any determination of such questions as whether the D.C. Circuit opinion was binding on the Commission as "the law of the case." As to Texas Eastern's application, we are of the opinion that it should be remanded to the Commission to determine whether the public convenience and necessity require that the certificate be denied, granted, or

25. 337 U.S. at 515-16.

granted conditionally, in view of the cost of acquisition. We note with regret that this is essentially what the D.C. Circuit told the Commission to do three and one-half years ago.

The orders are reversed and remanded for further proceedings not inconsistent with the opinion of this Court.

REVERSED AND REMANDED.

APPENDIX B.

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

No. 20560

M. H. MARR,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

No. 20564

SUN OIL COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

No. 20582

CONTINENTAL OIL COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

Appendix B

No. 20587

GENERAL CRUDE OIL COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

No. 20829

SUN OIL COMPANY,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

No. 20846

M. H. MARR,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

No. 20847

GENERAL CRUDE OIL COMPANY,
Petitioner,

FEDERAL POWER COMMISSION,
Respondent.

No. 20591

TEXAS EASTERN TRANSMISSION CORPORATION,
Petitioner,

v.

FEDERAL POWER COMMISSION,
Respondent.

On Petitions for Review of Orders of the Federal Power Commission.

Before RIVES and BROWN, *Circuit Judges,* and GROOMS, *District Judge.*

JUDGMENT

This cause came to be heard on the petitions of the M. H. Marr, Sun Oil Company, Continental Oil Company, General Crude Oil Company, and Texas Eastern Transmission Corporation, for review of Orders of the Federal Power Commission issued on February 6, 1963, April 12, 1963, and July 12, 1963, in Docket Nos. G-12446, et al, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that the Orders of the Federal Power Commission in these causes be and the same are hereby reversed; and that these causes be, and they are hereby remanded to the Commission for further proceedings not inconsistent with the opinion of this Court.

August 3, 1964

Issued as Mandate:

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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. ——

FEDERAL POWER COMMISSION, PETITIONER

v.

M. H. MARR, SUN OIL COMPANY, CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the Federal Power Commission, prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Fifth Circuit, entered on August 3, 1964.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit (U.G.I. Pet. 3a–14a) [1] is reported at 336 F. 2d 320. The opinion and orders of the Federal Power Commission (R. 962–984, 1223–1233) are reported at 29 FPC 249 and 30 FPC 153.

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[1] "U.G.I. Pet." refers to the petition for a writ of certiorari in No. 644, this Term, filed in this case by the United Gas Improvement Company. The opinion and judgment of the court below are printed in Appendices A and B, respectively, to that petition.

JURISDICTION

The judgments of the court of appeals setting aside the Commission's order were entered on August 3, 1964 (U.G.I. Pet. 17a). By order of Mr. Justice Black, dated November 2, 1964, the time for filing a petition for a writ of certiorari was extended to November 16, 1964.

QUESTION PRESENTED

Whether the sale by an independent producer to an interstate pipeline company of a leasehold interest in proven natural gas reserves, for use by the pipeline in supplying its interstate markets, constitutes a sale of "natural gas" subject to the jurisdiction of the Federal Power Commission.

STATUTE INVOLVED

The Natural Gas Act, 52 Stat. 821, 15 U.S.C. 717–717w, provides in pertinent part:

> Section 1(b). The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.
>
> Section 2. When used in this Act, unless the context otherwise requires—
>
> * * * * *

(7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

STATEMENT

This case involves the jurisdictional status, under Section 1(b) of the Natural Gas Act, of the sale of proven natural gas reserves in the Rayne Field in Louisiana to Texas Eastern Transmission Corporation, a pipeline, for use in supplying its interstate markets. The case arises out of Texas Eastern's application for a certificate of public convenience and necessity, pursuant to Section 7(c) and (e) of the Act, for facilities required to transport the gas from Rayne Field for delivery into its interstate pipeline system.

The Factual Background.—On February 1, 1957, Texas Eastern, which has an interstate natural gas transmission system extending from Texas to the Philadelphia-Newark area, executed contracts with Continental Oil Company, M. H. Marr, Sun Oil Company, and General Crude Oil Company to purchase their natural gas production in the Rayne Field at an initial price of 23.9 cents per Mcf, including 1.3 cents per Mcf for reimbursement of State taxes. In April 1957, Texas Eastern applied for a certificate authorizing it to construct and operate a compressor station and pipeline needed to transport natural gas from Rayne Field to Opelousas, Louisiana, where the gas was to be delivered into its existing pipeline system. At about the same time, the producers applied

for certificate authority to sell their gas to Texas Eastern. After a hearing, and despite objections to the 23.9 cent price by the Commission's staff and a number of intervenors, the examiner issued a decision on April 15, 1958, proposing to grant unconditioned certificates to each of the applicants (R. 367–405, 21 FPC 869–886).

On June 30, 1958, before the Commission had acted on exceptions to the examiner's decision, the Court of Appeals for the Third Circuit in *Public Service Commission of New York* v. *Federal Power Commission*, 257 F. 2d 717, affirmed *sub nom. Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378 (the "Catco" case) set aside an order of the Commission granting unconditional certificates for sales of gas from offshore Louisiana at 22.4 cents per Mcf (including a one-cent tax reimbursement)—a figure 1.5 cents lower than the price charged Texas Eastern—on the ground that the price had not been justified.

Within a month of the lower court's decision in *Catco*, three of the producers cancelled their original contracts with Texas Eastern and requested Commission approval for withdrawal of their certificate applications (R. 406–410).[2] In September 1958, Texas Eastern filed a petition to reopen the hearing and to amend its application.

The parties then formulated a new plan, under which Texas Eastern was to construct essentially

[2] The contracts had permitted the producers to terminate their agreements since September 1, 1957 (*e.g.*, R. 409).

the same facilities as those previously proposed and was to receive into its interstate pipeline system the same volumes of gas (R. 965). The only difference was that Texas Eastern now agreed to acquire leasehold interests in the reserves which the producers had formerly committed to standard-type gas purchase contracts with Texas Eastern.

To effectuate the plan, the four Rayne Field producers—Continental, Sun, Marr and General Crude—entered into a contract on December 4, 1958, (designated "Lease Sale Agreement") with Louisiana Gas Corporation, a wholly owned subsidiary of Texas Eastern. Since Texas Eastern, by a contract concurrently executed, was to have the right to acquire the title to the lease from Louisiana Gas, Texas Eastern has been treated throughout this litigation as the real purchaser (R. 965).

Under this agreement, the producers conveyed their leasehold rights to gas down to the base of the Nodosaria "A" Sand at a depth of from 13,650 to 13,890 feet, together with wells and related equipment, but reserved their "leasehold rights to the oil and other minerals, except gas and condensate", as well as to the gas and condensate below the Nodosaria "A" Sand (R. 186–188). While the agreement in terms conveyed the liquids, or "condensate",[3] to be extracted from the gas, it also provided that the producers would receive as "production payments" all proceeds from the sale of the condensate in excess

[3] Condensate is defined in the agreement as certain liquid and liquefiable hydrocarbons contained in the gas stream (R. 185).

of the costs of operating the leasehold and of processing expenses (R. 188–191).[4]

The lease-sale agreement between the producers and Texas Eastern was executed with the understanding (R. 828–829) that Continental, which had previously operated the field for itself and the other producers, would continue to conduct all operations, including drilling, developing and managing the wells and well equipment. A "Management Agreement" to this effect was signed on July 27, 1959 (R. 827–858).

Consideration for the conveyance was $134,395,700, of which $12,420,500 was paid in cash and the balance in promissory notes payable in 16 annual installments (ending in 1975). If, at Texas Eastern's nomination, gas production exceeds a specified amount, payment of the notes is to be accelerated (in inverse order of maturity) in accordance with a prescribed formula (R. 350–351).

While the exact amount of the recoverable reserves in the Rayne Field was a matter of controversy, they are admittedly substantial; Texas Eastern's estimate exceeds 900,000,000 Mcf (R. 966).

The lease-sale agreement was expressly conditioned upon the issuance by the Federal Power Commission of certificates of public convenience and necessity for the construction and operation of facilities required to take the gas from Rayne Field and to transport it

[4] The condensate is, in fact, being sold by Texas Eastern to the producers under long-term contracts which terminate when the production payments terminate. Thus, the producers buy the condensate and receive the net proceeds therefrom, while Texas Eastern retains none of the net proceeds from its sale (R. 582–587).

to the market area. Upon the issuance of certificates satisfactory to each party, the gas purchase contracts of February 1957 were to be cancelled (R. 175).[5]

Subsequent Proceedings.—The Commission granted Texas Eastern's request (*supra,* p. 4) for reopening the proceeding to consider the lease-sale plan and, on June 23, 1959, issued an unconditional certificate to Texas Eastern for its proposed facilities. In issuing the certificate, the Commission overruled the objection of the New York Public Service Commission that the record did not adequately disclose the costs of the leases to Texas Eastern, a showing which, in New York's view, required evidence of the costs of the producers.

On July 23, 1959, the New York Commission applied for rehearing (R. 467). Four days later, the transfer of the gas rights under the leases was completed and Texas Eastern began to receive gas from Rayne Field (R. 888)—gas which it has since transmitted and sold at wholesale in interstate commerce. Subsequently, the Commission denied rehearing (R. 476). On review, however, the Court of Appeals for the District of Columbia set aside the certificate order and remanded the case for further proceedings. *Public Service Commission of New York* v. *Federal Power Commission,* 287 F. 2d 143 (R. 862–868). The court held that, without substantial evidentiary support, "the language and tenor of the [Federal Power] Commission's Opinion and Order appear to confer general approval

[5] Three of the producers had purportedly cancelled their contracts at an earlier time. See, *supra,* p. 4.

upon the terms of the acquisition arrangement" (287 F. 2d at 145). On the assumption that the Commission had no jurisdiction over the lease-sale, the court stated that, regardless of the form of the transaction, the Commission was required to consider the acquisition costs of the pipeline before issuing a certificate.

The Proceedings on Remand.—On remand, the Commission reopened the proceeding. It afforded Texas Eastern an opportunity to show the reasonableness of its acquisition costs but did not limit the proceeding to that issue. In his decision, the examiner found that it was "virtually impossible, from the record, to determine the future costs to Texas Eastern for the Rayne Field since they are predicated upon assumptions and estimates" (R. 891–892). Nonetheless, he arrived at the conclusion that "when all [Texas Eastern's] costs, and estimated costs, are computed, the average cost becomes 24.34¢ per Mcf at 15.025 psia" (R. 896). Finding that this price was out of line and that the "in-line" price was 18.5¢ per Mcf (R. 897), he held that Texas Eastern should be granted a certificate conditioned upon the inclusion of the Rayne Field gas in the pipeline's cost of service at an initial price of 18.5¢ per Mcf (exclusive of taxes) and on its maintenance of supplemental accounts providing "summary and detailed data respecting the cost of the Rayne Field gas to Texas Eastern" (R. 897–898).

While noting that the Commission's staff and one of the intervenors "vigorously contend in their briefs the Commission does have jurisdiction over such [Rayne Field Lease] acquisitions" (R. 885), the

examiner held that the Commission was without jurisdiction "until (1) the gas was connected to an interstate system of pipelines or (2) the gas was dedicated to a sale in interstate commerce" (R. 887).

The Commission, on exceptions, concluded that the jurisdictional issue was not foreclosed by its earlier action in the case, and held that the transfer of gas to Texas Eastern constituted a sale in interstate commerce for resale, whether technically in the form of a leasehold transaction or otherwise.[6] It reasoned that the "fact that the gas, which had been developed to an extent where reasonable estimates could be made as to the available reserves, was sold in bulk rather than on a per Mcf basis does not change the nature of the sale" (R. 972). And it observed that the transaction by which Texas Eastern was obtaining the Rayne Field reserves, though in form a transfer of leasehold rights plus equipment, closely resembled, in practical effect, the ordinary sale of gas. In this connection, it found (R. 973):

> (1) Only gas in particular strata is conveyed; and the producers retain their interest in oil and other minerals;
>
> (2) In effect the transaction is for the sale of stripped gas inasmuch as the producers are to receive a production payment from Texas Eastern from the sale of natural gas liquids;
>
> (3) While the payment for the leases is represented by notes and spread over a 16-year period, the notes have an acceleration clause by

[6] The Commission expressly refrained from dealing with either the transfer of other property rights or the operation of the producing properties, wells or the equipment used for production and gathering (R. 972).

which payment is accelerated if production is increased, so that Texas Eastern's payments would be geared to production;

(4) By a management agreement dated July 27, 1959, Continental agrees to operate the field, including drilling wells and managing all wells and equipment, and to deliver to Texas Eastern specified minimum daily quantities of gas; Texas Eastern will reimburse Continental for its expenses in operating the field but the assignment of the leases shows that the costs of operating the leases will be defrayed out of the production payments to which Continental is entitled;

(5) It is Louisiana Gas, not Texas Eastern which is liable on the notes to the producers, so that the true purchaser of the gas [is] not bound by the principal obligation of the lease sale transaction.

Having decided that it had jurisdiction over the in-place sale of the Rayne Field gas reserves, the Commission concluded that it was not in the public interest to certificate the present transaction. It was not satisfied that the unit cost of the gas was reasonable or that it could be determined with reasonable accuracy. Rather than deny outright Texas Eastern's application, the Commission afforded it and the producers an opportunity to revise their contractual arrangements so as to furnish assurance that the transactions, already partially consummated, would be consistent with the public interest (R. 978–979, 1228–1229).

The Court of Appeals for the Fifth Circuit set aside the Commission order, holding that the contracts

transferred more than merely gas and hence were "lease" transfers within the meaning of *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, and beyond the jurisdiction of the Federal Power Commission.[7]

REASONS FOR GRANTING THE WRIT

Section 1(b) of the Natural Gas Act (15 U.S.C. 717(b)) gives the Federal Power Commission jurisdiction over "the sale in interstate commerce of natural gas for resale," but not over "the production or gathering of natural gas." In *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 685, this affirmative grant of jurisdiction was held to cover all wholesales of natural gas in interstate commerce, whether by a pipeline or by an independent producer, and whether occurring before, during, or after transmission in interstate commerce. In the present case, a group of independent producers sold to Texas Eastern, an interstate pipeline company, their working or leasehold interests in certain substantially developed gas properties. In practical terms they transferred their right to withdraw gas from a proven, substantial, and well-defined body of reserves lying above a named geological stratum. Indeed, the gas was ready to flow from the reserves upon the turn of a valve.

[7] In view of its disposition of the case, the court found it unnecessary to reach the contention of petitioners below that the Commission was barred from considering its jurisdiction over the transaction as producer sales because the Court of Appeals for the District of Columbia had disposed of the earlier appeal on the basis of the absence of Commission jurisdiction over the sale as such.

However it may be viewed under the law of conveyancing, we urge that such a transaction, for regulatory purposes, amounts to a sale of the natural gas reserves underground, or, as it is sometimes termed, a sale of the gas "in place."

It is not disputed that the volumes of deliverable gas obtained by Texas Eastern from these properties are destined for resale in States other than Louisiana. The sole question presented, therefore, is whether the sale of these proven reserves constitutes a jurisdictional sale of "natural gas" within the meaning of Section 1(b), or whether such a transfer must be classified instead as an exempt "production or gathering" activity. We believe that the decision below, which adopts the latter view and thereby sanctions the unregulated transfer of a vast body of proven reserves, reflects an unrealistically narrow reading of the *Phillips* case and opens the door to ready evasion of the Commission's jurisdiction over producer sales. Certainly, the decision is one of fundamental importance.

1. In our view, a transfer of natural gas by a producer to an interstate pipeline company is subject to the Commission's jurisdiction whether it is accomplished by means of a conventional sale of gas at the wellhead after it has been brought to the surface or, as in the present case, by means of a sale of the producer's interest in proven reserves in the ground.[8] The essential similarity of the two transactions is

[8] The Commission has had no occasion to decide whether it would have jurisdiction over a sale of leases where the anticipated reserves have not been proven or developed.

apparent. In a conventional sale of gas at the wellhead, the pipeline agrees to take specified volumes for a prescribed period of time (usually 20 years) at a stated price per unit, while the producer, by "dedicating" a defined body of reserves to the particular sale, surrenders his right to dispose of those reserves elsewhere.[9] In the type of transaction involved here, the producer, rather than merely "dedicating" his reserves, transfers his interest in them to the pipeline company in return for an immediate lump sum payment plus a promise to make additional payments annually, and the pipeline is then free to draw upon those reserves so long as it continues to meet its periodic obligations. In both cases, the pipeline commits itself to pay a specified sum of money over a given period of time in return for a right to take gas from a defined block of reserves, while the producer gives up the right to sell those reserves to any other buyer.

The ready interchangeability of the two forms of arrangement is well illustrated by the circumstances of this case. As we have shown (*supra*, pp. 4–5), the lease-sale agreements were substituted for the prior wellhead sales only after the Third Circuit had set aside the Commission's order granting unconditional

[9] Dedication of reserves occurs as soon as deliveries commence (*e.g.*, *Atlantic Refining Co.* v. *New York Public Service Commission*, 360 U.S. 378, 387–389). Moreover, once service has commenced, a producer can terminate deliveries from the specified reserves only after received Commission approval, normally pursuant to Section 7(b), regardless of the term of its contract. *Sunray Mid Continent Oil Company* v. *Federal Power Commission*, 364 U.S. 137.

certificates for the somewhat lower priced, but otherwise comparable, sales involved in *Catco*. And the new arrangement contemplated the construction of the same facilities and the receipt by Texas Eastern of the same volumes of gas as were envisaged by the earlier sale.

We do not say that the two types of transaction are alike in every respect. But such differences in substance as there may be between the sale of a leasehold interest in gas reserves and the standard gas purchase arrangement can be minimized by the contracting parties almost to the point of insignificance. For example, in the conventional wellhead sale, the function of bringing the gas out of the ground is usually performed by the seller, whereas a sale of the reserves "in place" might be expected to shift that responsibility to the pipeline purchaser. Here, however, this distinction is all but obliterated by contractual provisions which assign to one of the producers (Continental) the task of drilling, developing and managing the wells.[10]

Another potential difference between a sale of gas at the wellhead and a sale of reserves "in place" is

[10] But even if the pipeline itself were called upon to operate the wells, that fact would not alter the jurisdictional status of the sale. The principal economic function of an independent producer is to seek out and develop new gas reserves; once that is done, the operation of going wells is a relatively minor part of its activity, whether in terms of cost or of effort. Indeed, even in the ordinary gas purchase arrangement, this final step in the production process is sometimes assigned to the pipeline purchaser, rather than to the seller. See, *e.g.*, *Continental Oil Co.* v. *Federal Power Commission*, 266 F. 2d 208 (C.A. 5), certiorari denied, 361 U.S. 827.

that in the former the producer, rather than the pipeline, bears the risk of premature exhaustion of the reserves and derives the benefit of any unexpected abundance. The sale of a leasehold interest, on the other hand, would seem to shift those uncertainties to the pipeline purchaser; since the pipeline agrees to pay a fixed price for the entire body of reserves, and since the amount of those reserves cannot be predicted with certainty at the time of the sale, the pipeline's outlay per unit of production will ultimately depend upon whether the reserves exceed or fall short of expectations. This shifting of risks, however, is by no means a necessary feature of a leasehold sale. In two other cases recently decided by the Commission, the parties to similar "in place" sales made provision for a later readjustment of the purchase price on the basis of a redetermination of the reserves. *Tennessee Gas Transmission Co., et al.*, 30 FPC 1477, Opinion No. 413, Docket Nos. CP61–106, et al. pending on review *sub nom. Pan American Petroleum Co., et al.* v. *Federal Power Commission*, C.A. 10, Nos. 7659, 7751; *Continental Oil Co., et al.*, Docket No. RI64–129, Order issued October 23, 1964, and the examiner's decision issued August 19, 1964.[11] In the present case, Texas Eastern accepted a measure of the risk that it had underestimated the reserves—a risk which

[11] In that case, the examiner, after finding that the in-place sale should be treated as jurisdictional, concluded nevertheless that he was bound by the Fifth Circuit decision in the present case to hold the transaction non-jurisdictional. The Commission adopted the examiner's decision, except the conclusion that the decision below was binding.

inheres in the fact that, under the contract, payments "lead" production. It is notable, however, that Texas Eastern organized a subsidiary (Louisiana Gas Corporation) which actually entered into the lease-sale agreement and that the subsidiary alone is obligated to the producers on the notes (*supra*, p. 10). Should the reserves show signs of giving out before the end of the payout period, this "shell" corporation could default on the notes and return the leases to the producers. Thus, the principal risk—failure of the reserves or their destruction at a relatively early date—remains with the producers. The fact that the reserves were not measurable with precision at the time of the contract, and that the pipeline assumed some of the attendant risk—while it might, as the Commission indicated (R. 976–977), cast doubt upon whether the entire transaction would serve the public convenience and necessity—is not determinative. The dominant consideration is that what the pipeline paid for was the producer's interest in a huge (albeit not precisely measurable) block of deliverable gas. Both in the economic sense and in terms of the regulatory objective—the protection of the ultimate consumers—there has been a sale of natural gas, not a mere transfer of an interest in real property.

2. It follows that the transfer is not exempted by the "production or gathering" clause of Section 1(b). For, as the Tenth Circuit pointed out in *Saturn Oil & Gas Co.* v. *Federal Power Commission*, 250 F. 2d 61, 68 (C.A. 10), certiorari denied, 355 U.S. 956, the

Phillips decision established "that the production or gathering exemption of Section 1(b) did not apply to exclude from the jurisdiction of the Commission sales by any producer of natural gas for transportation interstate for resale to the public."

The decision below appears to rest, in part at least, upon the erroneous premise that a sale of natural gas cannot be jurisdictional if it takes place before the production and gathering processes have run their course. The court below emphasized (U.G.I. Pet 12a) that in *Phillips* this Court was "able to find jurisdiction because [quoting this Court's opinion] 'production and gathering, in the sense that those terms are used in Section 1(b), end before the sales by Phillips occur.'" There is no indication in the *Phillips* opinion, however, that this circumstance—the prior termination of production and gathering—was essential to this Court's finding of jurisdiction. Moreover, until the decision below, no court of appeals had so interpreted *Phillips*. On the contrary, both the Tenth Circuit in *Saturn* and the Fifth Circuit itself in *Deep South Oil Co.* v. *Federal Power Commission*, 247 F. 2d 882, 888–889,[12] have upheld the Commission's jurisdiction over producer sales at the wellhead even though consummated

[12] In two companion cases in which the opinion in *Deep South* was followed certiorari was denied. *Shell Oil Co.* v. *Federal Power Commission*, 247 F. 2d 903 (C.A. 5), certiorari denied, 355 U.S. 930 and *Humble Oil & Refining Co.* v. *Federal Power Commission*, 247 F. 2d (C.A. 5), certiorari denied, 355 U.S. 930.

before the gas had been gathered.[13] To the extent that the decision below holds that the Commission's jurisdiction can attach only after production and gathering has come to an end, it is plainly at odds with the views of the Tenth Circuit in *Saturn*.

3. The Fifth Circuit's reliance upon *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, is misplaced. That case involved a quite different issue—namely, whether an interstate pipeline could, without the Commission's authorization, dispose in any manner whatever of undeveloped leases and reserves which had been included in its rate base and which it had relied upon to support its applications for certificates of public convenience and necessity. The Court had no occasion to consider the question presented here—*i.e.*, whether a transfer of proven reserves is tantamount to a sale of "natural gas"—since the gas to be produced from Panhandle's transferred leases was in no event intended for resale in "interstate commerce," but was to be consumed within the producing State. We note, moreover, that *Panhandle* antedated the *Phillips* case by some six years, and was decided at a time when the Commission had not asserted jurisdiction even over conventional sales of gas by independent producers at the wellhead.

To be sure, the Court stated in *Panhandle* that the leases were "an essential part of production" (at 505) and that "the transfer of undeveloped gas leases is an activity related to production and gathering of nat-

[13] See also *Continental Oil Co.* v. *Federal Power Commission*, 266 F. 2d 208 (C.A. 5), certiorari denied, 361 U.S. 827.

ural gas and beyond the coverage of the Act" (at 515). That broad language, however, must be read in the context of the issue actually before the Court, and, in any event, we submit, should be reevaluated in the light of the *Phillips* decision and the ensuing development of the Commission's jurisdiction over sales by producers.

4. If allowed to stand, the decision below would provide a simple mechanism for avoiding federal regulation over producer sales. The present arrangement, as we have indicated, was substituted for a conventional gas purchase agreement when the Third Circuit's decision in *Catco* made it apparent that producers' initial prices would henceforth be subject to careful scrutiny. This sale, involving reserves estimated at nearly a billion Mcf, is by no means an isolated example of attempts to use the device of an in-place sale to avoid effective Commission regulation of the price at which gas is purchased for the interstate market. Pan American Petroleum Company, for example, claims non-jurisdictional status for a similar arrangement with Tennessee Gas Transmission Company involving the sale of estimated reserves of about 750 million Mcf from the Bastion Bay field in Louisiana. Review has been sought of the Commission's determination that this sale was jurisdictional (*Tennessee Gas Transmission Co., et al.*, 30 FPC 1477, Opinion No. 413, Docket Nos. CP61–106 et al., December 12, 1963) and the case is now awaiting decision, *Pan American Petroleum Co., et al.* v. *Federal Power Commission*, C.A. 10, Nos.

7659, 7751. Similarly, the Catco companies have sold gas reserves, estimated at more than 500 million Mcf, in the Ship Shoal Field, offshore Louisiana, to Tennessee Gas Transmission Co. under a lease sale agreement. *Continental Oil Co., et al.*, Docket No. RI64-129.[14]

To be sure, the Commission would have power to examine these transactions in a proceeding to determine just and reasonable rates for the pipeline purchaser, and at that time could disallow such portion of the leasehold acquisition costs as it found to be improvident. That power, however, is scarcely a substitute for the ability to pass upon the terms and conditions of the sale at the time it is proposed and still subject to revision. If it were, there would be no need for the Commission to regulate producer sales at all, for it could protect consumers simply by making appropriate adjustments in the pipeline's cost of service. As the Commission noted in its opinion (R. 976), "[c]ontrol limited to approving the costs of the gas to the purchasing pipeline is, of course, not an effective way to regulate producer prices be-

[14] The parties to another proposed lease sale agreement substituted a conventional sales agreement after the examiner had found that the lease sale was jurisdictional and had refused to issue a certificate for related facilities since the lease sale transaction was not shown to be required by the public convenience and necessity. See *Tennessee Gas Transmission Co.*, 29 FPC 4. On October 23, 1964, the Commission ruled that it has jurisdiction over the sale. It noted that it was not bound by the decision below, since the court of appeals had extended the stay of its mandate until November 11, 1964, and since the filing of a petition for certiorari was under active consideration.

cause in the large a pipeline must be allowed to pass on its purchased gas costs to the ultimate consumer or it cannot continue to discharge its public service responsibilities." [15]

---

[15] Nor is there any assurance that the Commission could effectively regulate these sales through the exercise of its power to certificate the construction of facilities, since the transfer might well be consummated, and the parties legally obligated, long before the pipeline sought authority to build the needed facilities for transporting the gas. And even if the transaction were presented to the Commission at an executory stage, it is questionable whether the Commission, through the exercise of its Section 7 conditioning powers, could retain the degree of continuing control over the transaction which could be exercised under Section 5 if the transaction were deemed a sale of "natural gas" in interstate commerce.

CONCLUSION

The decision below, if it stands, means that major producers and pipelines will be enabled to avoid the Commission's existing methods of regulating the price at which the former sell to the latter by the expedient of selling gas "in place" rather than under conventional gas purchase contracts. Thus, it may well present the most fundamental question from the standpoint of producer regulation since the *Phillips* decision in 1954. This petition for a writ of certiorari should accordingly be granted.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.
RALPH S. SPRITZER,
FRANK GOODMAN,
Assistants to the Solicitor General.

RICHARD A. SOLOMON,
General Counsel,
HOWARD E. WAHRENBROCK,
Solicitor,
PETER H. SCHIFF,
Attorney,
Federal Power Commission.

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Nos. 644, 693

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

THE UNITED GAS IMPROVEMENT COMPANY,
Petitioner,

v.

CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, M. H. MARR, SUN OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION,
Respondents.

FEDERAL POWER COMMISSION,
Petitioner,

v.

M. H. MARR, SUN OIL COMPANY, CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT BRIEF OF RESPONDENTS IN OPPOSITION

(List of Counsel for Respondents on Inside Front Cover)

PRINTED IN U.S.A. — BY DELARUE/TEXAS

LLOYD F. THANHOUSER
THOMAS H. BURTON, JR.
P. O. Box 2197
Houston 1, Texas
Of Counsel for Respondent
Continental Oil Company

BRUCE R. MERRILL
P. O. Box 2197
Houston 1, Texas
Counsel for Respondent
Continental Oil Company

W. MCIVER STREETMAN
Humble Building
Houston, Texas 77002
Counsel for Respondent
General Crude Oil Company

DONLEY C. WERTZ
2500 Republic National Bank
Building
Dallas, Texas 75201
and
JOHN T. GUYTON
867 Texas Eastern Building
Shreveport, Louisiana
Of Counsel for Respondent
M. H. Marr

STANLEY M. MORLEY
1700 K Street, N.W.
Washington, D.C. 20006
Counsel for Respondent
M. H. Marr

JOHN A. WARD, III
1608 Walnut Street
Philadelphia 3, Pennsylvania
and
HERF M. WEINERT
Petroleum Building
Beaumont, Texas
Of Counsel for Respondent
Sun Oil Company

ROBERT E. MAY
1700 K Street, N.W.
Washington, D.C. 20006
Counsel for Respondent
Sun Oil Company

JACK D. HEAD
Southern National Bank
Building
Houston, Texas 77002
and
KEITH M. PYBURN
825 Pennsylvania Building
Washington, D.C. 20004
Of Counsel for Respondent
Texas Eastern Transmission
Corporation

W. D. DEAKINS, JR.
2100 First City National
Bank Building
Houston, Texas 77002
Counsel for Respondent
Texas Eastern Transmission
Corporation

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OPINIONS BELOW

The Opinion of the Court of Appeals, Fifth Circuit, is reported in 336 F. 2d 320. It is also reprinted as Appendix A (pp. 1a-14a) to the Petition of UGI.[1]

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[1] The United Gas Improvement Company, petitioner in No. 644, is herein referred to as "UGI".

The opinions and orders of the Federal Power Commission[2] which were reviewed by the Court of Appeals are as follows:

Opinion and Order No. 378, issued February 6, 1963, 29 F.P.C. 249; R. 962-981

Concurring Opinion of O'Connor, C., 29 F.P.C. 258; R. 982-984

Order issued April 2, 1963, 29 F.P.C. 692; R. 1136-1139

Opinion and Order No. 378-A, issued July 12, 1963, 30 F.P.C. 153; R. 1223-1230

Dissenting Opinion of Woodward, C., 30 F.P.C. 157; R. 1230-1233

JURISDICTION

The Judgment of the Court of Appeals, reversing FPC's Orders of February 6, April 2 and July 12, 1963, and remanding the causes to the Commission for further proceedings, was entered on August 3, 1964 (UGI Pet. 17a). Petitions for writs of certiorari have been filed by FPC and UGI. Two other parties who sought below to uphold the Commission's Orders — Public Service Commission of the State of New York and Public Service Electric and Gas Company — seek no review by this Court.

QUESTIONS PRESENTED

As observed by the Court below: "The principal question to be decided is whether the Commission has jurisdiction over these lease transactions" (336 F. 2d at 323, UGI Pet. p. 7a). More specifically, that principal question and further questions presented by the record herein are stated as follows:

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[2] The Federal Power Commission, petitioner in No. 693, will hereinafter be referred to as "FPC" or "Commission".

1. Whether FPC has jurisdiction over a conveyance of leasehold interests when such conveyance is made prior to any connection to an interstate pipeline, or any sale in interstate commerce, of the gas produced from the leased properties.

2. Whether a conveyance of leasehold interests in properties located wholly within the boundaries of a single state constitutes a "sale in interstate commerce of natural gas for resale" within the contemplation of the Natural Gas Act.

3. Whether, after remand of a cause by a Court of Appeals which has reviewed an FPC decision, the Commission is bound by the appellate court's mandate.

STATUTES INVOLVED

In addition to the portions of the Natural Gas Act (52 Stat. 821; 15 U.S.C. §§ 717 *et seq.*) quoted at pages 2 and 3 of FPC's petition, Sections 2(5) and 2(6) of that Act (15 U.S.C. §§ 717 a(5), 717 a(6)) are also pertinent. They provide as follows:

> Section 2. When used in this Act, unless the context otherwise requires —
>
> • • •
>
> (5) "Natural gas" means either natural gas unmixed, or any mixture of natural gas and artificial gas.
>
> (6) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

COUNTERSTATEMENT OF THE CASE

The statement of the case set forth in the opinion below (336 F. 2d at 320-323, UGI Pet. pp. 3a-7a) is in all respects factual and accurate, whereas petitioners' statements (FPC Pet. pp. 3-11; UGI Pet. pp. 5-10), are in several material respects misleading. Hence, we are constrained to make this counterstatement, supplementing the Court of Appeals' opinion.

Respondents M. H. Marr, Sun Oil Company, Continental Oil Company and General Crude Oil Company (collectively referred to as "Assignors") owned mineral leases covering nearly all of the potentially productive area of the Rayne Field, Acadia Parish, Louisiana.[3] On July 27, 1959, the Assignors sold their Rayne Field leasehold interests, subject to certain reservations, to respondent Texas Eastern Transmission Corporation ("Texas Eastern").[4] Up to the time of this sale of leases there had been no dedication of any Rayne Field gas to interstate sale, there had been no connection of any of the Rayne Field wells to an interstate pipeline, and there had been no sale or movement of any Rayne Field gas in interstate commerce.

FPC now contends that the sale of leases on July 27, 1959, should be deemed a "sale in interstate commerce of natural gas for resale" and hence subject to the Commission's regulatory jurisdiction. Such contention is diametrically contrary to each of the following:

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[3] Rayne Field is a deep, multi-strata gas-condensate field estimated to be capable of producing over one trillion cubic feet of natural gas and some 51 million barrels of condensate and plant liquids (Ex. X-2, R. 745).

[4] The sale was made through an intermediary, Louisiana Gas Corporation, which in turn, assigned the leasehold interests to Texas Eastern. Texas Eastern was treated as the actual purchaser throughout the proceedings below and will be so treated here.

(1) This Court's landmark decision, handed down on June 20, 1949, in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498;

(2) FPC's original unanimous holding in the case at bar — Opinion No. 322, issued June 23, 1959, 21 F.P.C. 860 (R. 446-467);

(3) The firm position taken by the Commission in its Brief, dated July 11, 1960, filed in the earlier review proceeding herein before the Court of Appeals for the District of Columbia Circuit (R. 1182-1214);

(4) The unanimous opinion and judgment rendered by the D. C. Court of Appeals in this case on December 8, 1960 — *Public Service Commission of New York* v. *Federal Power Commission*, 287 F. 2d 146 (R. 862-868);

(5) FPC Presiding Examiner Frazee's Decision, issued herein on June 29, 1962 — 29 F.P.C. 259 (R. 877-902);

(6) FPC Commissioner Woodward's incisive dissenting opinion issued herein on July 12, 1963 — 30 F.P.C. 157 (R. 1230-1233);

(7) The unanimous opinion and judgment rendered by the Fifth Circuit Court of Appeals on August 3, 1964, review of which is now being sought — *Marr* v. *Federal Power Commission*, 336 F. 2d 320 (UGI Pet. 1a-17a).

The lease sale

In December 1958, Assignors entered into an agreement to sell Texas Eastern their leasehold interests in the Rayne Field (R. 172 *et. seq.*).[5] Texas Eastern applied to the Com-

[5] Early in 1957 Assignors had proposed sales of Rayne Field gas to Texas Eastern under 20-year gas sale contracts. That proposal was abandoned in the summer of 1958. The tentative contracts never became effective; no gas was ever sold or delivered thereunder. As FPC frankly admitted in its Brief to the D.C. Court of Appeals, "the original program . . . has little bearing on the issues before this Court" (R. 1185). That is still true: the program which the parties abandoned a full year before consummating their lease sale transaction is thoroughly immaterial.

mission for authority to construct and operate the facilities (a short pipeline spur and a compressor station) needed to take Rayne Field gas into Texas Eastern's system. Such a certificate was granted by the Commission on June 23, 1959, in its Opinion No. 322 (21 F.P.C. 860; R. 449-467). In the course of that Opinion, the Commission said:

> "Texas Eastern has not filed an application for a certificate authorizing the acquisition of the Rayne Field leases *and we have no authority to issue such a certificate.*" (R. 456).[6]

Later in Opinion No. 322, the Commission emphasized that *"the purchase of the leases is not a contract to purchase gas."* (R. 462).

On July 27, 1959, the lease sale was consummated. By an Assignment and Conveyance, Assignors conveyed their Rayne Field leasehold interests to Texas Eastern (R. 184 *et. seq.*). Texas Eastern made a cash down payment and delivered to each Assignor a series of promissory notes, payable over a period of 16 years, evidencing the balance of the purchase price (R. 349-353). Each Assignor's notes were secured by a mortgage of the assets Texas Eastern was acquiring (R. 338-348). These mortgages, together with the Assignment and Conveyance, were all duly recorded in accordance with Louisiana law.

Review proceedings in the D.C. Court of Appeals

The New York Public Service Commission, an intervenor, took the Commission's Opinion No. 322 up for review before the Court of Appeals, District of Columbia Circuit. The Commission there reiterated its position that it lacked jurisdiction over the Rayne Field leasehold sale.

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[6] Emphasis in all quotations herein is ours.

Throughout its Brief, dated July 11, 1960, the Commission repeatedly disclaimed any such jurisdiction (see, *e.g.*, R. 1185, 1200-1202, 1205, 1212).

On December 8, 1960, the Court of Appeals handed down an opinion and judgment reversing the Order accompanying the Commission's Opinion No. 322. *Public Service Commission of New York* v. *Federal Power Commission*, 287 F. 2d 143; (R. 862-868). The Court expressly upheld the contention of the Commission that it lacked jurisdiction over the sale of leases:

> "Instead of purchasing gas in the usual manner from the four producer-sellers, Texas Eastern proposed to acquire leasehold interests in the reserves . . .
>
> "The significance of this change in the form of the transaction, at least from the standpoint of the producer-sellers, is manifest. Sales of natural gas by an independent producer are subject to regulation under Sections 4 and 5 of the Natural Gas Act. Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954). *But the Commission has been held to lack jurisdiction over gas leases.* Federal Power Commission v. Panhandle Eastern Pipe Line Co., 337 U.S. 498 (1949)" (287 F. 2d at 145).
>
> "It is of no importance here that the transactions by which Texas Eastern proposes to acquire the gas will themselves be, by virtue of a change in form, *beyond the regulatory control of the Commission.*" (*Id.* at 146).

The Court further held, however, that there was insufficient record evidence to support the Commission's apparent general approval of the terms of the lease acquisition arrangement (*Id.* at 145). "[T]he Commission's warrant to inquire arises by virtue of its responsibility to regulate the purchaser, regardless of the status of the seller" (*Id.* at 146). Accordingly, the Court remanded the

case with directions that the Commission follow one of "two courses": either (1) "expressly disclaim any approval of the price to be paid," or (2) "permit Texas Eastern to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity" (*Id.* at 146). Both at the end of its opinion and in its formal mandate, the D. C. Circuit limited the remand to "proceedings not inconsistent with the opinion of the court" (*Id.* at 146; R. 868).

Proceedings after remand

By Order issued on July 14, 1961 (26 F.P.C. 167; R. 869-872), the Commission elected to follow the second of the "two courses" prescribed by the Court of Appeals; *i.e.*, to reopen the proceedings and afford Texas Eastern an opportunity to justify its acquisition costs. Among other things, this July 14th Order defined the issues to be tried in the reopened proceeding and, in so doing, made no reference whatever to any possible assertion of FPC jurisdiction over the sale of leases.

Further hearings were held before FPC Presiding Examiner Frazee during the latter part of 1961. None of the Assignors was represented at, or participated in, these hearings. Only Texas Eastern offered evidence, none of which had any bearing on the question of the Commission's jurisdiction over the sale of leases.

Examiner Frazee rendered his Decision on June 29, 1962 (29 F.P.C. 259; R. 877-902) and therein adhered to the repeatedly established proposition in this case that the Commission has no jurisdiction over the sale of the Rayne Field leases (R. 885-887).[7]

[7] Examiner Frazee did, however, propose a method of regulating Texas Eastern (R. 896-899) — a method which the Commission refused to approve (29 F.P.C. at 256-257; R. 977-978).

Opinion No. 378

On February 6, 1963, the Commission handed down its Opinion No. 378 (29 F.P.C. 249; R. 962-981), asserting for the first time that it *did* possess jurisdiction over the sale of Rayne Field leases; that Assignors had not actually conveyed interests in real property, but instead had sold a commodity, natural gas, for resale in interstate commerce; and that Assignors were therefore obligated, under the Natural Gas Act, to file with the Commission applications for certificates authorizing such sale, together with "appropriate rate schedules". Opinion No. 378 went on to command Assignors and Texas Eastern to rescind the lease sale they had consummated almost four years earlier and to enter into some unspecified new contractual arrangement, effective retroactively back to the day in August 1959 (R. 721, 722) when Texas Eastern began taking gas from its Rayne Field leases.

Opinion No. 378-A

After Assignors and Texas Eastern had filed applications for rehearing (R. 984-1135), the Commission, on April 2, 1963, issued an order purportedly granting such applications, but effectively denying them (29 F.P.C. 692; R. 1136-1139). Finally on July 12, 1963, the Commission issued its Opinion No. 378-A (30 F.P.C. 153; R. 1223-1230). Therein, FPC reasserted its jurisdiction over the Rayne Field lease sale, but postponed, pending judicial review, the requirement that the parties rescind their 1959 sale of leases and enter into a new, retroactive contractual arrangement.[8]

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[8] FPC warned the parties, nevertheless, that unless they eventually do go through with rescission and revision of their lease sale, they will be subject to prosecution for violating the Natural Gas Act (R. 1228).

Commissioner Woodward dissented (30 F.P.C. 157; R. 1230-1233) with the following cogent observations:

"In this proceeding, the Commission commits grave error in attempting to exercise jurisdiction in areas forbidden to it by the Congress and the Supreme Court of the United States. To attain its objective, the Commission is now saying that any sale of property which contains gas in formation is subject to its jurisdiction. *Without question this is an unlawful assumption of jurisdiction.*" (R. 1231).

"The Commission's assertion of jurisdictional authority over the sale of leasehold rights in the Rayne Field, on the basis of an unsupported, vague and obscure dissertation, is a complete reversal of its prior position in these proceedings." (R. 1232).

"In my judgment, that opinion [*Public Service Comm.* v. *FPC*, 287 F. 2d 143] conclusively settled the jurisdictional question. The leasehold sale was not a sale in interstate commerce; it affected only rights and interests in real property located wholly within the State of Louisiana. Any other conclusion disparages the Court of Appeals adjudication — this fact is indisputable. *If permitted, this Commission's course of action would destroy the rights of parties to court review and render the decisions of the courts meaningless.*" (R. 1232-1233).

"Apart from its misapplication of the statute, *the majority errs in attempting to force the parties hereto to revise their contracts* . . . there is nothing in the Act which confers such absolute power on the Commission. The majority cannot, by decree, force a meeting of the minds of the parties here involved." (R. 1233).

The opinion of the Court below

The opinion of the Fifth Circuit (336 F. 2d 320) summarizes the relevant facts (336 F. 2d at 321-323). It then discusses at some length this Court's controlling decision in

Federal Power Commission v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (*Id.* at 323-324). The opinion goes on to dispose of FPC's numerous and devious arguments (*Id.* at 324-326). And then it concludes as follows (*Id.* at 326):

> "We are bound by *Panhandle's* classification of leaseholds as being part of the 'physical activities, facilities and properties' used in production and gathering . . .
>
> "Thus, we conclude that the lease transactions in the instant case are outside the Commission's jurisdiction. The Commission complains that this will leave a 'gap' in its regulatory powers. Fifteen years ago the Supreme Court in *Panhandle* authorized the Commission to bring this to the attention of Congress, and the Commission has repeatedly done so. If in its wisdom Congress has declined to act, we have neither the power nor the inclination to act in its stead."

ARGUMENT

I.

The decision below is clearly correct

A. *This Court's decision in the* Panhandle *case is controlling here.*

This Court's decision in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, is determinative of the jurisdictional question raised in the case at bar. It was there held: "that the Natural Gas Act did not envisage federal regulation of the entire natural-gas field to the limit of constitutional power" (337 U.S. at 502); that Section 1(b) of the Act "expressly exempts from its coverage . . . the production and gathering of natural gas" (*Id.* at 503-504); and that:

> "In *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U.S. 581, 603, we said that this phrase ['the production or gathering of natural gas'] comprehended the *producing properties* and gathering facili-

ties of a natural-gas company. We adhere to this natural and clear meaning of the words, and their obvious expression of congressional intent. *Of course leases are an essential part of production.*" (*Id.* at 504-505).

This Court went on to reject the Commission's contentions that it was vested with jurisdiction over transfers of leases by Sections 4, 5 and 7 of the Act:

> "Sections 4, 5 and 7 do not concern the producing or gathering of natural gas; rather they have reference to the interstate sale and transportation of gas and are so limited by their express terms." (*Id.* at 508).

> "To accept these arguments springing from power to allow interstate service, fix rates and control abandonment would establish wide control by the Federal Power Commission over the production and gathering of gas. *It would invite expansion of power into other phases of the forbidden area. It would be an assumption of powers, specifically denied the Commission by the words of the Act* as explained in the report and on the floor of both houses of Congress. The legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states." (*Id.* at 509-512, footnotes omitted).

> "The District Court found as a fact, and the finding is undisputed by the Commission, that, 'It has been the practice in the natural gas industry for companies to trade freely in gas leases, and the Commission has never heretofore asserted the right to regulate transfers of such leases.' Thus for over ten years the Commission has never claimed the right to regulate dealings in gas acreage. Failure to use such an important power for so long a time indicates to us that the Commission did not believe the power existed." (*Id.* at 513).

At the end of its opinion, this Court concluded:

> "As we have held above that the transfer of undeveloped gas leases[9] is an activity related to the production and gathering of natural gas and beyond the coverage of the Act, the authority of the Commission cannot reach the sales . . . . If the Commission is of the opinion that it should have power to control the disposition of leases by natural-gas companies, it is authorized to call the attention of Congress to that fact." (*Id.* at 515-516).

Nothing has occurred since June 20, 1949, to weaken the authority or cast doubt on the validity of this Court's decision in the *Panhandle* case. To the contrary, it has been cited with approval and followed in numerous subsequent opinions dealing with the jurisdictional question.[10]

Thus, in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), on which petitioners place such heavy reliance, the *Panhandle* case was cited approvingly by this Court for the exact proposition that FPC jurisdiction does not extend to producing properties:

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[9] The leases in *Panhandle* were "undeveloped" only in the sense that they had not been fully drilled; but they were sufficiently "proven" to permit an estimate of approximately 700 billion cubic feet of underlying gas reserves, or about 12% of Panhandle Eastern's total gas reserves (337 U.S. at 499, 500). The Rayne Field leases were likewise partially "undeveloped", because they had not been fully drilled when conveyed to Texas Eastern (R. 485-486, 493-494, 536; Ex. X-5, p. 2, R. 753). However, they, too, were adequately "proven" for reserve estimation purposes.

[10] See, *e.g. Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 678 (1954); *Saturn Oil & Gas Co.* v. *FPC*, 250 F. 2d 61, 68 (10th Cir. 1957), *cert. den.* 355 U.S. 956; *Continental Oil Co.* v. *FPC*, 266 F. 2d 208, 210 (5th Cir. 1959), *cert. den.* 361 U.S. 827; *Public Service Comm.* v. *FPC*, 287 F. 2d 143, 145 (D.C. Cir. 1960); *Kansas-Nebraska N. Gas Co.* v. *State Corp. Comm.*, 169 Kan. 729, 222 P. 2d 704, 710 (1950); *Emerald Coal & Coke Co.* v. *Equitable Gas Co.*, 378 Pa. 591, 107 A. 2d 734, 737 (1954).

"In *Federal Power Com. v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 505, we observed that the 'natural and clear meaning' of the phrase 'production or gathering of natural gas' is that it encompasses *'the producing properties* and gathering facilities of a natural-gas company.'" (347 U.S. at 678).

And in the case at bar, the Courts of Appeals for both the D. C. Circuit and the Fifth Circuit have faithfully followed and applied the doctrine laid down in the *Panhandle* case. *Public Service Comm.* v. *FPC*, 287 F. 2d 143, 145 (D.C. Cir. 1960); *Marr* v. *FPC*, 336 F. 2d 320, 323-324, 326, (5th Cir. 1964).

What petitioners are actually seeking here is to have this court reverse itself and overrule its landmark decision in *Panhandle*.[11] That would mean — as this Court there held — judicial, rather than congressional, amendment of the Natural Gas Act. This Court declined so to legislate in 1949 and told FPC that if it wished to regulate leasehold transfers, it should go to Congress for such added authority (337 U.S. at 515-516). The Commission did just that, not once, but twelve times in as many years.[12] Congress turned a deaf ear to this full dozen of pleas for more regulatory authority.

The Fifth Circuit Court of Appeals similarly refused to indulge in judicial legislation. "If in its wisdom Congress has declined to act, we have neither the power nor the inclination to act in its stead" (336 F. 2d at 326). The decision of the Court below is, we submit, obviously and eminently correct.

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[11] FPC admits as much at page 19 of its petition, where it urges that *Panhandle* be "reevaluated".

[12] See Commissioner Woodward's dissenting opinion, including footnote 1 thereto — 30 F.P.C. at 157; R. 1231-1232.

B. *The fact that the Assignors sold leasehold interests in real property — and not the commodity, natural gas — is incontrovertible.*

By the Assignment and Conveyance of July 27, 1959, the Assignors "transferred, assigned and conveyed" their Rayne Field "oil, gas and mineral leases . . . . together with all those wells which are presently completed as gas wells and related lease and well equipment . . . and such rights of ingress, egress and easements for such facilities as Grantors have the right to convey" (R. 184). Beyond question, therefore, the sale of leases by Assignors to Texas Eastern was purely and solely a transfer of interests in real property and was *not* a sale of the commodity, natural gas, either "in place" or "in bulk".

This distinction goes to the very heart of the case at bar, because Section 1(b) of the Natural Gas Act expressly limits its application "to the transportation of natural gas in interstate commerce [and] the sale of natural gas in interstate commerce for resale"; and Section 2(5) defines "natural gas" to mean a commodity capable of being so transported and sold: "either gas unmixed, or any mixture of natural and artificial gas."

Natural gas can become a commodity, and therefore a subject of commerce, only after it has been extracted from subterranean strata and reduced to possession. *West* v. *Kansas Natural Gas Co.*, 221 U.S. 229, 255 (1911); *Pennsylvania* v. *West Virginia*, 262 U.S. 553, 586 (1923).

When Assignors conveyed their leasehold interests to Texas Eastern, the Rayne Field gas lay buried in porous rock formations more than two miles deep in the earth's crust, where it had been formed and accumulated millions of years before. *It was a part of the realty.* And since it had not yet been brought to the surface or reduced to

possession, it was neither a commodity nor anything capable of being transported in interstate commerce. Consequently, it could not fall within the ambit of FPC jurisdictional authority under the Natural Gas Act.

C. *Petitioners' efforts to transform the sale of leases into a sale of natural gas are completely futile.*

Based on substantially the same record now before this Court, the Commission held in June 1959 that "the purchase of leases is not a contract to purchase gas" (Opinion No. 322, 21 F.P.C. at 867; R. 462). And in its 1960 Brief to the D. C. Court of Appeals, the Commission solemnly represented that this case "centers about *a sale of leases*. It does *not* concern a purchase of gas in place within the underground reservoir (which Louisiana mineral law does not recognize). Nor does it involve a contract to sell gas as produced by the assignors" (R. 1185).

Since early 1963, however, the Commission has been insisting that white is black; that the sale of Rayne Field leases was in essence a "sale of natural gas in interstate commerce for resale." To achieve that impossible result, FPC indulges in an amazing assortment of deceptive verbiage and fallacious arguments.[13] As the entire basis for its arguments, the Commission points an accusing finger at five "features" of the lease sale transaction: (1) Assignors' reservation of rights in deep horizons and in crude oil and other minerals; (2) Assignors' reservation of a production payment payable out of proceeds from sales of natural gas (plant) liquids and separator liquids; (3) provision for acceleration of the purchase-money notes

[13] *E.g.*, calling the Assignors "producers," a misnomer decried in FPC's own 1960 Brief (R. 1185); characterizing the lease sale as a sale of gas "in place," "in bulk," or in a "block" (FPC Pet. 9, 12, 14, 16); terming mere arguments as FPC "findings" (*Id.* 9-10; *cf.* UGI Pet. 3, 9, 10).

in the event of stepped-up depletion of the Rayne Field reserves; (4) a Management Agreement under which Continental Oil Company was employed to operate the field as agent for Texas Eastern; and (5) direct liability of Louisiana Gas Corporation, rather than Texas Eastern, on the purchase-money notes (29 F.P.C. at 254, R. 973; FPC Pet. pp. 9-10; UGI Pet. p. 9).

These five "features" were, one and all, valid, reasonable and in no wise unusual in a transaction of the character and magnitude of the one here in controversy (see the opinion below, 336 F. 2d at 324-325, UGI Pet. pp. 10a-11a). Each such feature was, moreover, entirely consistent with a bona fide sale of leasehold interests.[14]

(1) *Reservation of rights* in deep, untested strata and in oil and other minerals did not, and could not, transmute the remaining leasehold rights conveyed by Assignors to Texas Eastern into the commodity, natural gas. Such reservations are common and accepted practice in the petroleum industry.[15]

(2) *The reservation of a production payment*, payable out of the proceeds from sales of natural gas liquids, was likewise in line with normal practice.[16] This feature of the transaction: (a) relieved Texas Eastern for many years from paying Rayne Field operating costs; (b) provided

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[14] "There was no evidence or implication that the negotiations leading to the lease purchase and sale agreements was anything but arm's length and we find that they were arrived at on the basis of arm's length bargaining" (Opinion No. 332, 21 F.P.C. at 867, R. 462).

[15] See: 3 SUMMERS, OIL AND GAS (Perm. ed. 1958), 603, 614; 2 WILLIAMS & MEYERS, OIL AND GAS LAW 269; Merrill, *The Oil and Gas Lease — Major Problems*, 4 Neb. L. Rev. 488, 528, 531 (1962).

[16] See: Bryan, *Overriding Royalty Under Oil, Gas and Mineral Leases in Louisiana*, 29 Tul. L. Rev. 349 (1954).

Texas Eastern with the prospect of substantial additional income after the reserved production payment is satisfied; and (c) conserved Texas Eastern's cash resources by materially reducing the aggregate purchase price.

(3) *The provision for accelerated payment of the purchase-money notes,* in case of exceptionally high takes from the Rayne Field, was merely a method of protecting Assignor's collateral security. Payment of the notes was not "geared to production" as FPC asserts (29 F.P.C. at 254; FPC Pet. p. 10); there was no provision for *decelerated* payments in the event of *decreased* production. Moreover, Texas Eastern's substantial down payment could in no way be "geared to production."

(4) *The Management Agreement* was entered into for the perfectly legitimate safety and business reasons recited in its preambles (R. 827-828). Texas Eastern's Vice President Jacobs so testified without contradiction (R. 578-579). Continental Oil Company acts exclusively as managing agent for Louisiana Gas Corporation (Texas Eastern) under the Agreement (R. 828); and it is Texas Eastern, not Continental, who has the right to make all important operating decisions, such as whether and where wells shall be drilled or deepened (Art. 1(a), R. 829), whether secondary recovery or recycling operations shall be conducted (Art. 5(a), R. 837-838), and what volume of gas shall be nominated for production each month (Art. 5(f), R. 839-840). Contracts of this nature are not uncommon.[17]

(5) *Interposition of Louisiana Gas Corporation* shielded Texas Eastern against direct liability (Opinion No. 322, 21 F.P.C. at 865, R. 459). "[T]he manner in which Texas Eastern's arrangements for the purchase of leases were

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[17] See 3 SUMMERS, OIL AND GAS (Perm. ed. 1958) 708.

consummated is not unique in the oil and gas business.[18] Texas Eastern's primary reason for handling the arrangements through an intermediary corporation, Louisiana Gas Corporation, was so it would not have any liability for the amount of the notes on its books" (*Id.*, 21 F.P.C. at 867, R. 462; and see Mr. Jacobs' supporting testimony, R. 87-88).

Thus, when these five "features" are viewed objectively, it becomes apparent that they were each and all normal business arrangements which the parties worked out in good faith through arm's length negotiations. These "features" did not and could not convert a sale of leasehold interests in real property into a "sale of natural gas in interstate commerce for resale."

D. *FPC can regulate effectively without having jurisdiction over transferors of leases.*

There is no genuine basis for petitioners' avowed fear that the decision below will frustrate effective FPC regulation (FPC Pet. pp. 12, 19-21; UGI Pet. pp. 13-14). Gas consumers can be protected by regulating the *purchaser* of leases rather than by regulating the *seller*.

Four years ago the D. C. Circuit directed the Commission to "regulate the purchaser, regardless of the status of the sellers" by ascertaining whether Texas Eastern's acquisition costs "will be consistent with the public convenience and necessity" (287 F. 2d at 146). Although the Commission at first embarked upon such an inquiry (Order of July 14, 1961, 26 F.P.C. 167; R. 869-872), it later decided to disregard and disobey the D. C. Circuit's mandate, pre-

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[18] There is ample evidence to this effect in the record (R. 86-87), as FPC took pains to point out in its 1960 brief to the D. C. Court of Appeals (R. 1188, footnote 13). "[I]t is not uncommon for a mortgage to be given with the stipulation that the mortgagor shall not be personally bound beyond the value of the property so mortgaged." *Scheznailer* v. *Fontenot*, 147 La. 467, 85 So. 207, 210 (1920).

ferring, instead, to succumb to the temptation of seizing forbidden jurisdictional powers.

Now, the Fifth Circuit has again remanded the matter to the Commission "to determine whether the public convenience and necessity require that the [Texas Eastern] certificate be denied, granted, or granted conditionally, in view of the cost of acquisition" (336 F. 2d at 326).

Up to now, however, the Commission has declined even to inquire into Texas Eastern's acquisition cost (29 F.P.C. at 256-257, 258; R. 978-979, 981); and until the Commission has at least tried in good faith to comply with the mandates of the two Courts of Appeals in this case, it cannot truthfully say that the method of regulation directed by them is ineffective.

If and when the Commission does obey the mandates of the Courts of Appeals, it must inevitably find that the lease acquisition was consistent with the public convenience and necessity. The undisputed evidence establishes that the acquisition of the leases constituted a prudent investment. The cost of Rayne Field gas to Texas Eastern was "in line" with the cost of other large quantities of gas then connected to Texas Eastern's system (R. 517-522), including the cost of Texas Eastern's other company-owned production (R. 562-563). The record further shows that any purchase under gas purchase contracts of the Rayne Field gas, or of any other comparable and then available gas supply, would have "triggered" price escalations in Texas Eastern's other gas purchase contracts by an amount in excess of $10 million per annum (R. 544). Thus, the Rayne Field lease acquisition was the only means by which Texas Eastern could satisfy its customers' urgent requirements for additional gas supplies and at the same time "hold the line" on the cost of gas to consumers (R. 544-549).

II.

There are no "special or important reasons" for review of the case by this Court (Supreme Court Rule 19)

A. The Court below did not decide "an important question of federal law which has not been, but should be, settled by this court".

As previously shown (*ante* pp. 11-14), the principal question of law presented here — whether FPC possesses jurisdiction over transfers of leases — was definitely settled in *FPC* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949). There is no need to settle that question again.

B. The Court below did not decide "a federal question in a way in conflict with applicable decisions of this Court".

FPC asserts that the decision below "reflects an unrealistically narrow reading of *Phillips*" (FPC Pet. p. 12) and that *Panhandle* "should be reevaluated in the light of *Phillips*" (*Id.* p. 19). UGI claims that the decision below "fundamentally undermines" *Phillips*, "runs like a Hausmann boulevard, squarely through the middle" of *Phillips*, yet, remarkably enough, "avoids" *Phillips* (UGI Pet. pp. 11, 13-14). These lame arguments cannot stand up for three reasons: (1) *Phillips* expressly cited *Panhandle* with approval (see *ante*, pp. 13-14). (2) *Phillips* and *Panhandle* are not in conflict, as the D. C. Court of Appeals demonstrated in this very case (287 F. 2d at 145). (3) *Phillips* was concerned with sales in interstate commerce of the commodity, natural gas, which can exist as such only *after* its extraction from the earth; whereas *Panhandle* dealt — as in our case — with the transfers of leasehold interests in real property *before* production and interstate

sale of the gas occurred. Accordingly, there is no conflict whatever between the decision below and the outcome in *Phillips*. Indeed, the Fifth Circuit's determination is in perfect consonance with this Court's ruling in *Panhandle*, which firmly established the applicable legal principles.

C. *The Court below has not "rendered a decision in conflict with the decision of another court of appeals on the same matter".*

Petitioners try to make it appear that the decision below conflicts with the Tenth Circuit's 1957 decision in *Saturn Oil & Gas Co.* v. *Federal Power Commission*, 250 F. 2d 61, *cert. den.* 355 U.S. 956 (1958) (FPC Pet. pp. 16-18; UGI Pet. pp. 14-17). A mere reading of the *Saturn* opinion demolishes this contention. There under consideration was the sale of produced gas rather than the sale of leases. What is more, the Tenth Circuit gave full recognition to the *Panhandle* doctrine. The Court there said (250 F. 2d at 68):

> "In *Interstate Natural Gas Co.* v. *Federal Power Commission* [331 U.S. 690] and *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.* [337 U.S. 504-505] the court recognized that effect must be given the production or gathering exemption. These cases and *Colorado Interstate Gas Co.* v. *Federal Power Commission* [324 U.S. 581] are referred to in the *Phillips* decision as holding that the production or gathering exemption applies to the physical activities, facilities, and *properties* used in the production and gathering of natural gas and not to the business of production and gathering [347 U.S. 678, 681]. *Until there is a sale of the natural gas produced by such operations and installations in interstate commerce for resale, they are exempt.*"

Thus, the Tenth Circuit's decision in *Saturn* is seen to accord exactly with the views expressed by the Fifth Circuit in the case at bar.

CONCLUSION

The petitions of FPC and UGI for writs of certiorari should be denied.

Respectfully submitted,

LLOYD F. THANHOUSER
THOMAS H. BURTON, JR.
Of Counsel

BRUCE R. MERRILL
Counsel for Respondent
Continental Oil Company

W. MCIVER STREETMAN
Counsel for Respondent
General Crude Oil Company

DONLEY C. WERTZ
JOHN T. GUYTON
Of Counsel

STANLEY M. MORLEY
Counsel for Respondent
M. H. Marr

JOHN A. WARD, III
HERF M. WEINERT
Of Counsel

ROBERT E. MAY
Counsel for Respondent
Sun Oil Company

JACK D. HEAD
KEITH M. PYBURN
Of Counsel

W. D. DEAKINS, JR.
Counsel for Respondent
Texas Eastern Transmission Corporation

Dated: December 15, 1964

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 644

THE UNITED GAS IMPROVEMENT COMPANY, *Petitioner*

v.

M. H. MARR, SUN OIL COMPANY, CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION, *Respondents.*

No. 693

FEDERAL POWER COMMISSION, *Petitioner*

v.

M. H. MARR, SUN OIL COMPANY, CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION, *Respondents.*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF THE SOUTHERN CALIFORNIA GAS COMPANY, SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, AND PACIFIC LIGHTING GAS SUPPLY COMPANY, AS AMICI CURIAE

JOHN ORMASA
L. T. RICE
Southern California Gas Company

MILFORD SPRINGER
ROBERT M. OLSON, JR.
Southern Counties Gas Company of California
810 South Flower Street
Los Angeles, California

WILLIAM L. COLE
R. D. TWOMEY
Pacific Lighting Gas Supply Company
720 West Eighth Street
Los Angeles, California

Attorneys for Amici Curiae

J. DAVID MANN, JR.
JOHN E. HOLTZINGER, JR.
FREDERICK MORING
MORGAN, LEWIS & BOCKIUS
1120 Connecticut Ave., N.W.
Washington, D. C. 20036
Of Counsel

March 10, 1965

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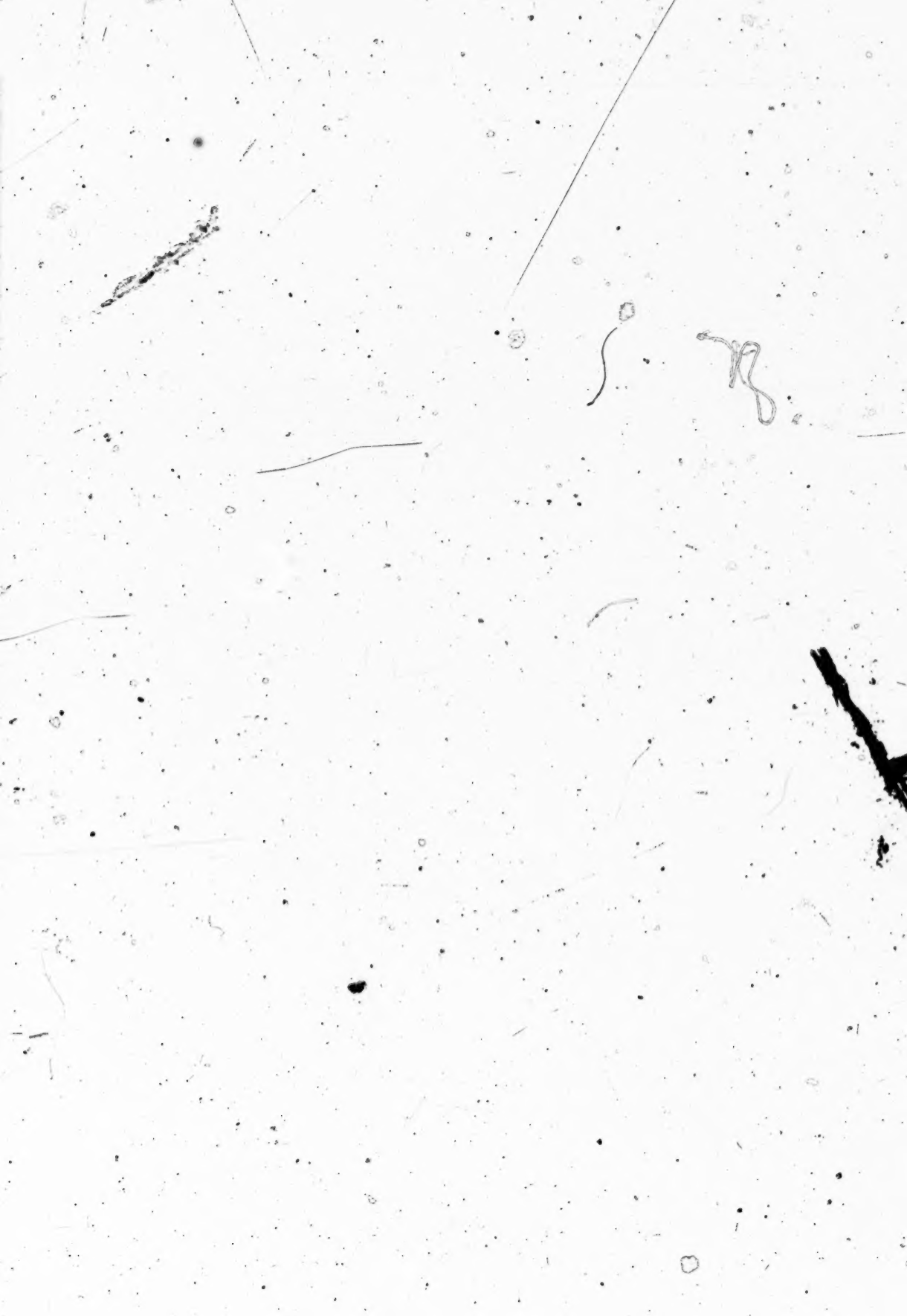


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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE OF THE SOUTHERN CALIFORNIA GAS COMPANY, SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA AND PACIFIC LIGHTING GAS SUPPLY COMPANY

The Southern California Gas Company, Southern Counties Gas Company of California and Pacific Lighting Gas Supply Company, respectfully move for leave to file the single accompanying brief *amici curiae*

in these cases. The consents of the petitioners have been obtained. Consents of the respondents have not been obtained. Notwithstanding objection, movants believe their participation herein is in the public interest and that they can make an important and unique contribution to the Court's understanding of the issues here involved.

The movants, as affiliated public utilities, own and operate the largest integrated retail gas distribution system in the United States, serving over 10,000,000 people in Southern California. All of their interstate gas supplies are sold to them for resale and hence are subject to Federal Power Commission certificate and rate jurisdiction.

Movants are vitally interested in the present case because, as distribution companies dependent in large measure upon an interstate supply of natural gas, movants are directly affected by the level of prices charged by producers for deliveries of gas for resale in interstate commerce. While the supply of gas involved in the present case is destined for consumption in the eastern portion of the United States, the precedent value of a decision on the issues at bar would extend to all segments of the industry. Indeed, the decision of the Court of Appeals would severely hamper the Commission's ability to regulate effectively the price charged by producers for gas disposed of in interstate commerce *from any producing area* and could, in consequence, place an undue cost burden upon natural gas distribution companies and the millions of small consumers served by such companies.

Movants, as gas distributors serving the nation's largest and fastest growing gas market, believe that

they can make a definite contribution to the Court's understanding of certain economic factors which must not be overlooked in reviewing this latest attempt to evade regulatory control of natural gas moving in interstate commerce.

Respectfully submitted

JOHN ORMASA
L. T. RICE
Southern California Gas Company

MILFORD SPRINGER
ROBERT M. OLSON, JR.
Southern Counties Gas Company of California
810 South Flower Street
Los Angeles, California

WILLIAM L. COLE
R. D. TWOMEY
Pacific Lighting Gas Supply Company
720 West Eighth Street
Los Angeles, California

Attorneys for Amici Curiae

J. DAVID MANN, JR.
JOHN E. HOLTZINGER, JR.
FREDERICK MORING
MORGAN, LEWIS & BOCKIUS
1120 Connecticut Ave., N.W.
Washington, D. C. 20036
Of Counsel

March 10, 1965

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On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF AMICI CURIAE OF THE SOUTHERN CALIFORNIA GAS COMPANY, SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, AND PACIFIC LIGHTING GAS SUPPLY COMPANY

INTEREST OF AMICI CURIAE

The interest of the *Amici Curiae* is set forth in the motion to which this brief is attached.

STATEMENT

The present case arises out of a transaction originally brought before the Federal Power Commission (hereinafter referred to as "the Commission") in 1957. At that time, four producer-applicants—Continental Oil Company (Continental), M. H. Marr (Marr), Sun Oil Company (Sun) and General Crude Oil Company (General Crude)—sought certificate authority under § 7(c) of the Natural Gas Act[1] to make a "conventional" sale of gas from the Rayne Field area of south Louisiana at an initial price of 23.9 cents per Mcf.[2] Texas Eastern Transmission Corporation (Texas Eastern), the purchaser of the gas, simultaneously requested certificate authority to construct the facilities necessary to connect its existing transmission line with the gas to be delivered to it at Rayne Field.[3]

Prior to the issuance of the Commission's decision on such applications, and shortly after the decision of the Third Circuit Court of Appeals rejecting the 22.4 cents-per-Mcf initial price for gas from South Louisiana in the *CATCO* case,[4] the transaction was recast in its present form, i.e. to provide for a sale of leasehold interests by the four producers to Texas Eastern (through a Texas Eastern subsidiary). Accordingly, the Texas Eastern application was reopened for further hearings on the merits of its application to attach

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[1] 15 U.S.C. §§ 717-717w.

[2] The term "Mcf" is used to designate 1000 cubic feet of natural gas.

[3] The applications of Texas Eastern and the producers were consolidated for purposes of hearing and decision at F.P.C. Docket No. G-12446, *et al.*

[4] *Public Service Commission* v. *F.P.C.*, 257 F.2d 717 (3rd Cir. 1958); *aff'd* 360 U.S. 378 (1959).

gas supplies acquired through the lease-sale transaction. The producer-applicants; proceeding on the theory that Commission jurisdiction did not extend to their sale of gas leases to Texas Eastern, withdrew their certificate applications.[5] The Commission in 1959 granted Texas Eastern the requested authority to acquire the Rayne Field reserves. This approval was reversed on appeal, however, the D.C. Circuit Court of Appeals holding that the Commission erred in failing to apply the *CATCO* "hold the line" rule in approving the Texas Eastern acquisition price.[6]

On remand, the Commission conducted further hearings which culminated in the issuance of the decision which is the subject of the instant review proceedings. Specifically, the Commission concluded that the transaction by which Texas Eastern acquired the Rayne Field gas supply was, despite its "lease sale" form, a "sale of natural gas for resale in interstate commerce" within the meaning of that term in § 1(b) of the Natural Gas Act. Accordingly, the Commission required the four producer-sellers to file applications for certificate authority and, in view of the difficulty in de-

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[5] Three of the producers withdrew prior to the Commission decision on the revised lease sale (R. 3417, 3423, 3428) and the withdrawal of the fourth, Continental, was authorized as part of the Commission decision (R. 3723).

[6] R. 4038. While the Commission decision had found a unit price of 20.59 cents per Mcf. applicable to the reserves sold under the instant lease sale (R. 3720), the court made no specific unit price finding, noting "the difficulty of comparing an ordinary gas purchase with what is here proposed . . ." (R. 4041). On remand, the Examiner's Decision found a unit price of 24.34 cents per Mcf (R. 4111). The Commission Decision presently on review directed the parties to file new contracts and made no finding as to the unit price established under the lease sale arrangement (R. 4329).

termining the actual unit price for gas under the lease-sale agreement, directed the parties to file a new contract conforming to the principles stated in the Commission order.[7]

The United States Court of Appeals for the Fifth Circuit set aside the Commission's order on the grounds that, under this Court's *Panhandle* decision,[8] the Commission lacks jurisdiction over gas leases and thus could not exert regulatory control over the producers here involved. The decision below limits the scope of Commission inquiry to a determination of whether a certificate should be granted to Texas Eastern in view of the proposed cost of acquisition.

ARGUMENT

I. THE DECISION BELOW IS IN BASIC CONFLICT WITH THE PHILLIPS CASE AND THE REGULATORY SCHEME CONTEMPLATED BY THE NATURAL GAS ACT.

The principal issue to be decided in this case is whether the Commission's jurisdiction over producer sales under the Natural Gas Act extends only to transactions in which gas is sold for resale in interstate commerce according to a conventional form of purchase and sale agreement or whether Commission jurisdiction extends also to an agreement which, although cast in a different form, is nevertheless an instrument

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[7] The Commission order characterized the lease-sale transaction as containing provisions "that would make it difficult if not impossible to subject to regulatory control the price for the sale to an interstate pipeline of this large body of gas . . ." The order further holds that "in order to determine the cost [per Mcf], lengthy hearings would be required and careful consideration would have to be given to factors that should not be involved in a certificate proceeding." R. 4329.

[8] *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949).

by which gas is disposed of in interstate commerce for resale for ultimate public consumption. Whereas the court below held that the lease-sale form of the present transaction deprived the Commission of jurisdiction, we contend that, where the essence of the transaction, viewed in its regulatory context, *is indistinguishable* from a conventional gas sale in its impact upon customers of a pipeline, Commission control necessarily applies.

The landmark decision on producer regulation under the Natural Gas Act is, of course, this Court's 1954 *Phillips* decision.[9] There, the scope of Commission jurisdiction was held to include "all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company." [10]

Although the decisions of this Court have placed no precise definition on the term "sale of gas" as used in the Natural Gas Act, it is clear that, under the purposes and objectives of the Natural Gas Act as recognized in *Phillips* and other cases, this term need not and should not be narrowly construed to include only those transactions which qualify as sales of gas in the "property law" sense. The transaction at bar is plainly identical to a conventional gas sale in terms of its regulatory consequences[11] and is therefore subject to the same degree of regulatory control.

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[9] *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 674 (1954).

[10] *Id* at 682.

[11] While the present contracts do not provide for the conventional periodic price escalations, there remains the possibility of an increased unit price since the precise volume of reserves acquired for the fixed, lease-sale price cannot be determined until the reserves are depleted.

In enacting the Natural Gas Act, Congress intended to provide the consumer with "a complete, permanent and effective bond of protection against excessive rates and charges."[12] Given the "comprehensive regulatory scheme" contemplated by the Act, an exemption is not lightly to be implied. Here, the chief difference between the Texas Eastern lease-sale acquisition and the conventional jurisdictional sale is in the timing of the transaction with reference to the production process. Whereas the normal gas sale transfers title to the gas at the surface, the instant lease-sale contract conveys the producer's interest in specified developed gas reserves in their sub-surface location. The form of the transaction, in terms of property law, is different from a sale of a tangible commodity. But the crucial consideration under the Natural Gas Act is that the present lease-sale accomplishes precisely the same end as the ordinary gas sale, i.e. it transfers the gas to Texas Eastern for resale in interstate commerce. Accordingly, the fact that the conveyance occurs before the gas is brought to the surface, and is termed a "lease sale" instead of a sale of gas, should not change the regulatory significance of the transaction.

In *Phillips,* this Court expressly rejected the notion that sales made prior to the completion of the production and gathering process were exempt from jurisdiction[13] and this Court has consistently held that the

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[12] *Atlantic Refining Co.* v. *F.P.C.*, 360 U.S. 378, 388 (1959).

[13] See 347 U.S. at 680, 681, wherein Commission jurisdiction is discussed in the following terms:

"Petitioners [*Phillips, et al.*] attempt to distinguish the Interstate Case on the grounds that the Interstate Company transported the gas in its pipelines *after completion of gathering and before sale*, and that the Interstate Company was affiliated

relevant test is whether the transaction disposes of gas "in interstate commerce for resale."[14]

The reliance of the court below on this Court's *Panhandle* decision[15] as support for the conclusion that lease sales are within the "production and gathering" exemption[16] is misplaced and illustrates the conflict between the decision below and the jurisdictional principles in *Phillips*. True, the *Panhandle* case holds that "the transfer of undeveloped gas leases is an activity related to the production and gathering of natural gas and beyond the coverage of the Act . . ."[17] But the leases in *Panhandle* were undeveloped leases sold to a non-jurisdictional company operating wholly within the state in which the reserves were located; not, as here, *developed*, proven reserves sold to an *interstate*

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with an interstate pipeline company and therefore subject to the Commission jurisdiction in any event. This Court, however, refused to rely on such refinements and instead based its decision in Interstate on the broader ground that sales in interstate commerce for resale by producers to interstate pipeline companies *do not come within the 'production or gathering' exemption.*" (Footnote omitted, emphasis added.)

[14] See *Interstate Natural Gas Co.* v. *F.P.C.*, 331 U.S. 682, 687 (1947); *F.P.C.* v. *East Ohio Gas Co.*, 338 U.S. 464, 467 (1950). See also *California* v. *Lo-Vaca Gathering Co.*, 33 U.S. L. Week 4159, 4160 (U.S. January 18, 1965), wherein the Court, in ruling on a question of Commission jurisdiction, stated "the fact that a substantial part of the gas will be resold, in our view, invokes federal jurisdiction at the outset over the entire transaction."

[15] *F.P.C.* v. *Panhandle Eastern Pipe Line Co.*, *supra* note 8.

[16] § 1(b) of the Natural Gas Act provides, in pertinent part, as follows:

"The provisions of this act . . . shall not apply to . . . the production or gathering of natural gas."

[17] 337 U.S. at 515.

pipeline.[18] The *Panhandle* case is simply inapposite since it did not involve a sale of any gas destined for resale in interstate commerce. Moreover, in light of the subsequent *Phillips* holding that the "production or gathering" exemption does not affect the jurisdictional status of sales of gas for resale in interstate commerce, the *Panhandle* ruling on lease sales should not now be broadened; rather, it should be limited to the facts presented in that case.

In sum, the decision below overlooks the congressional purposes, as recognized in *Phillips* and in other cases, to provide a comprehensive scheme of federal regulation of sales of natural gas for resale in interstate commerce and, as we show below, such decision could lead to a breakdown in the effective consumer protection required by the Natural Gas Act.

II. THE DECISION BELOW OPENS AN AVENUE OF ESCAPE FROM COMMISSION JURISDICTION WHICH THREATENS TO UNDERMINE EFFECTIVE REGULATION IN THE PUBLIC INTEREST.

From the point of view of a distributing system dependent, in large measure, on an interstate gas supply, the present case has a significance far beyond the terms of the particular transaction at bar. To exempt an otherwise jurisdictional transaction solely by reason of its lease-sale form is an open invitation for other producers to deliver gas to the interstate market free of regulatory scrutiny.

The natural incentive of producers to avoid Commission rate regulation is a well-known fact. Indeed, the present case is one of a series of similar transactions, now in various stages of litigation, in each of

[18] *Id.* at 500, 501.

which producers seek to commit sizeable blocks of gas reserves to the interstate market without approval of the price to be charged. The *CATCO* companies, for example, *pursuant to a lease-sale agreement,* have conveyed to Tennessee Gas Transmission Company a gas reserve from the Ship Shoal area, offshore Louisiana, estimated at 500 million Mcf[19] and a similar agreement between Pan American Petroleum Company and Tennessee Gas, involving approximately 750 million Mcf from the Bastian Bay field, South Louisiana, was held jurisdictional by the Commission.[20] The U.S. Court of Appeals for the Tenth Circuit recently reversed the Commission's ruling and held that the transfer of leases was beyond Commission control in view of the *Panhandle* decision discussed *supra.*[21] Other similar arrangements have been proposed but withdrawn after adverse Commission or Examiner's decisions on the jurisdictional issue.[22]

The use of the lease-sale device to escape regulatory control over producer prices may not necessarily be limited to new deliveries of gas to the interstate market. If, as the court below has held, lease sales are exempt as part of the production and gathering process, it may well be that supplies already committed to the interstate market will be sold by pro-

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[19] *Continental Oil Co. et al.,* Docket No. RI64-129. The Commission order asserting jurisdiction over the lease-sale was issued October 23, 1964, rehearing denied, December 21, 1964.

[20] *Tennessee Gas Transmission Co.,* 30 F.P.C. 1477 (1963).

[21] *Pan American Petroleum Co.* v. *F.P.C.,* (Nos. 7659, 7751, 10th Cir., December 30, 1964).

[22] See *Tennessee Gas Transmission Co.,* 29 F.P.C. 4 (1963) (reserve volume of 405 million Mcf); *Monterey Gas Transmission Co.,* 29 F.P.C. 929 (1963) (reserve volume of 6 billion Mcf).

ducers—in lease-sale transactions—to pipelines, without regulatory control as to price.

Other types of contractual arrangements to avoid Commission regulation of producer sales have been proposed,[23] and this Court has only recently rejected efforts to segregate, by contract terms, gas sold to interstate pipelines for specific non-jurisdictional uses.[24]

In view of the natural tendency to take advantage of any exemption from Commission regulation and the relative ease with which such exemption could be achieved under the ruling below, there is little doubt that an affirmance of such ruling would allow a substantial, if not preponderant, portion of the nation's gas reserves to be delivered into interstate commerce without regulatory control as to price. Whether the producing states could regulate a transaction which effectively conveys gas for resale to an interstate, Commission-regulated pipeline (such as Texas Eastern) is extremely doubtful.[25] Even if such local jurisdiction could be upheld, there is little likelihood that it would be exerted since the principal beneficiaries of

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[23] *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1 (1961); *Southern California Edison Co.*, Docket Nos. CP61-172, *et al.* Order permitting withdrawal of application and terminating proceedings, 29 F.P.C. 25 (1963); *Gulf Pacific Pipeline Co.*, Docket No. CP63-223, (application now in hearings before the Commission.) Each of these cases involve a direct sale by the producers to the end-user of the gas.

[24] *California* v. *Lo-Vaca Gathering Co., supra*, note 14; *F.P.C.* v. *Amerada Petroleum Corp.*, —— U.S. —— (No. 585, decided February 1, 1965).

[25] Cf. *Panhandle Eastern Pipe Line Co.* v. *Michigan Public Service Comm'n.*, 341 U.S. 329 (1941); *Public Utilities Comm'n.* v. *Attleboro Co.*, 273 U.S. 83, 89 (1927); *California* v. *Lo-Vaca Gathering Co., supra* note 14.

any such regulation would be located in other states served by the interstate pipeline. Under such circumstances, the ruling set forth in this Court's *Transcontinental* opinion[26] is clearly applicable. In determining the scope of Commission jurisdiction under the Natural Gas Act, it was there held that

> "[I]t is equally clear that Congress did not desire that an important aspect of this field be left unregulated. . . . Therefore, when a dispute arises over whether a given transaction is within the scope of federal or state regulatory authority, we are not inclined to approach the problem negatively, thus raising the possibility that a 'no man's land' will be created . . . . That is to say, in a borderline case where congressional authority is not explicit we must ask whether state authority can practicably regulate a given area and, if we find that it cannot, then we are impelled to decide that federal authority governs."[27]

The need for regulatory control over transactions of the kind here in issue is beyond question; under the circumstances present in this case, the only adequate and appropriate means of regulation is Commission control under the Natural Gas Act.

III. THE DECISION WOULD HAVE AN INFLATIONARY IMPACT ON FIELD PRICES OF NATURAL GAS.

As this Court is well aware, development of an effective regulatory program for independent gas producers has created difficult problems for the Commission.[28] The decision below will greatly aggravate those

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[26] *F.P.C.* v. *Transcontinental Gas Pipe Line Corp.*, *supra* note 23.

[27] *Id.* at 19-20.

[28] See *Wisconsin* v. *F.P.C.*, 373 U.S. 294 (1963).

problems, not only by the grant of exemption to a particular form of transaction, but through the resulting increase in gas costs of pipeline suppliers of distribuiton companies, and the rates paid by ultimate consumers of such companies. Southern California Gas Company, Southern Counties Gas Company of California and Pacific Lighting Gas Supply Company (Southern California Companies) are affiliated public utilities, owning and operating the largest integrated natural gas distribution system in the United States. These companies distribute natural gas through approximately 2.8 million meters to a population of about 10 million people in the southern portion of California.

The Southern California Companies' operation is typical of that provided by approximately 200 "straight" natural gas distributors[29] throughout the country. These natural gas distribution companies perform the bulk of the nation's business in buying gas and distributing it through the gas mains which underlie almost every city in the United States.

At the present time, the Southern California Companies' interstate gas purchase costs exceed $187 million a year. The gas, all resold in California, is delivered to them at the California-Arizona border at rates which, while subject to the jurisdiction of the Federal Power Commission, are in large measure dependent upon the rates charged by the producers supplying gas in the field to the pipelines. Accordingly, the Southern California Companies are vitally inter-

[29] Those companies selling only gas as distinguished from combination companies, selling both gas and electricity, such as Pacific Gas & Electric Company. Less than 25% of the nation's gas service is supplied by combination gas and electric companies.

ested in the maintenance of effective producer rate regulation under the Natural Gas Act.[30]

It follows that the decision below is of fundamental importance to the Southern California Companies, as well as other similarly situated gas distributors, since it presents the possibility, if not the probability, that a substantial portion of the present and future sales of gas by producers in interstate commerce will be exempt from regulation. If a significant share of producer sales are uncontrolled as to price, the inevitable effect will be to increase the price paid for gas in the field,[31] and thus ultimately to increase the distributors', as well as the consumers', gas costs. In this manner, the favorable trend in producer rate regulation, achieved primarily through the "hold the line" policy enunciated in the *CATCO* case, would abruptly be reversed.[32]

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[30] An increase of 1 cent per Mcf in the average unit cost of gas supplied to the Southern California Companies would represent an annual cost increase of approximately $7 million.

[31] In each of the lease-sale transactions thus far proposed, the price charged for the gas has been substantially above the Commission's "in-line" price standards developed under the *CATCO* mandate. In the present case, the 24.34-cent price found by the Examiner compares with an "in-line" price of 18.5 cents for South Louisiana.

[32] The "hold the line" policy, originating in this Court's *CATCO* opinion (*Atlantic Refining Co.* v. *Public Service Comm'n.*, 360 U.S. 378 (1958)) has been implemented by the Commission's Statement of General Policy No. 61-1, 24 FPC 818 (1960) and the certificate conditioning and rate suspension policies adopted therein. In addition, the Commission's "in-line" price policy has been upheld in numerous cases involving reductions in initial prices proposed by producers for sales to pipelines, including those supplying the California market. See, e.g., *California Oil Co.* v. *F.P.C.*, 315 F.2d 652 (10th Cir. 1963); *Shell Oil Co.* v. *F.P.C.*, 334 F.2d 1002 (3rd Cir. 1964). Cf. *F.P.C.* v. *Texaco, Inc.*, 377 U.S. 33 (1964).

Further and more substantial benefits through effective producer rate regulation are anticipated upon the conclusion of the Permian Basin area rate proceeding, wherein the justness and reasonableness of the rates collected for a major portion of the gas ultimately consumed in California is now before the Commission for decision.[33] These significant and long-sought gains in effective regulation of interstate sales of gas, and indeed the whole of the Commission's program of producer regulation, would stand in serious jeopardy if the transaction here in question is declared exempt from Commission jurisdiction.

We do not contend that the present transaction is *per se* contrary to the public interest. We contend that the public interest, as well as the terms of the Natural Gas Act, require that transactions of the type at bar be subjected to the same regulatory scrutiny applicable to any other delivery and sale of gas for resale in interstate commerce.

While the precise level of the adverse impact on the consuming states of the decision below cannot be foreseen, it is beyond question that the economic consequences throughout the United States would be serious and severe. The Natural Gas Act was intended to provide "complete protection" against excessive rates and it would be anomalous, indeed, to hold that the aim of a statute so motivated can be frustrated by a mere change in the form of a transaction disposing of gas for resale in interstate commerce.

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[33] See Presiding Examiner's Initial Decision on Permian Area Rates, issued September 17, 1964, recommending substantial rate reductions and returns on sales made by producers in the Permian Basin. Under present regulatory policy, refunds received by jurisdictional pipelines would be "passed through" to the distributing companies and ultimately to the gas consumer.

CONCLUSION

The Natural Gas Act is clearly intended to provide effective consumer protection through rate regulation and its jurisdictional provisions should not be construed so as to nullify or restrict the Act's principal purpose.

The lower court's decision places controlling weight on the *form* of the transaction here in question and, by holding such transaction exempt from Commission jurisdiction, permits a producer to dispose of gas for resale in interstate commerce without the rate regulation required by the Natural Gas Act. The decision points the way to a circumvention of the rate-making provisions of the Act by producer-suppliers of gas in interstate commerce and thus poses a serious threat to the Commission's scheme of producer rate regulation at a time when that program is finally on the threshold of effective operation.

For these reasons, the Decision of the Court of Appeals should be reversed and vacated.

Respectfully submitted,

JOHN ORMASA
L. T. RICE
Southern California Gas Company

MILFORD SPRINGER
ROBERT M. OLSON, JR.
Southern Counties Gas Company of California
810 South Flower Street
Los Angeles, California

MORGAN, LEWIS & BOCKIUS
J. DAVID MANN, JR.
JOHN E. HOLTZINGER, JR.
FREDERICK MORING
1120 Connecticut Ave., N.W.
Washington, D. C. 20036
Of Counsel

WILLIAM L. COLE
R. D. TWOMEY
Pacific Lighting Gas Supply Company
720 West Eighth Street
Los Angeles, California
Attorneys for Amici Curiae

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IN THE

Supreme Court of the United States

October Term, 1964.

No. 644.

THE UNITED GAS IMPROVEMENT COMPANY,
Petitioner,

v.

CONTINENTAL OIL COMPANY, et al.,
Respondents.

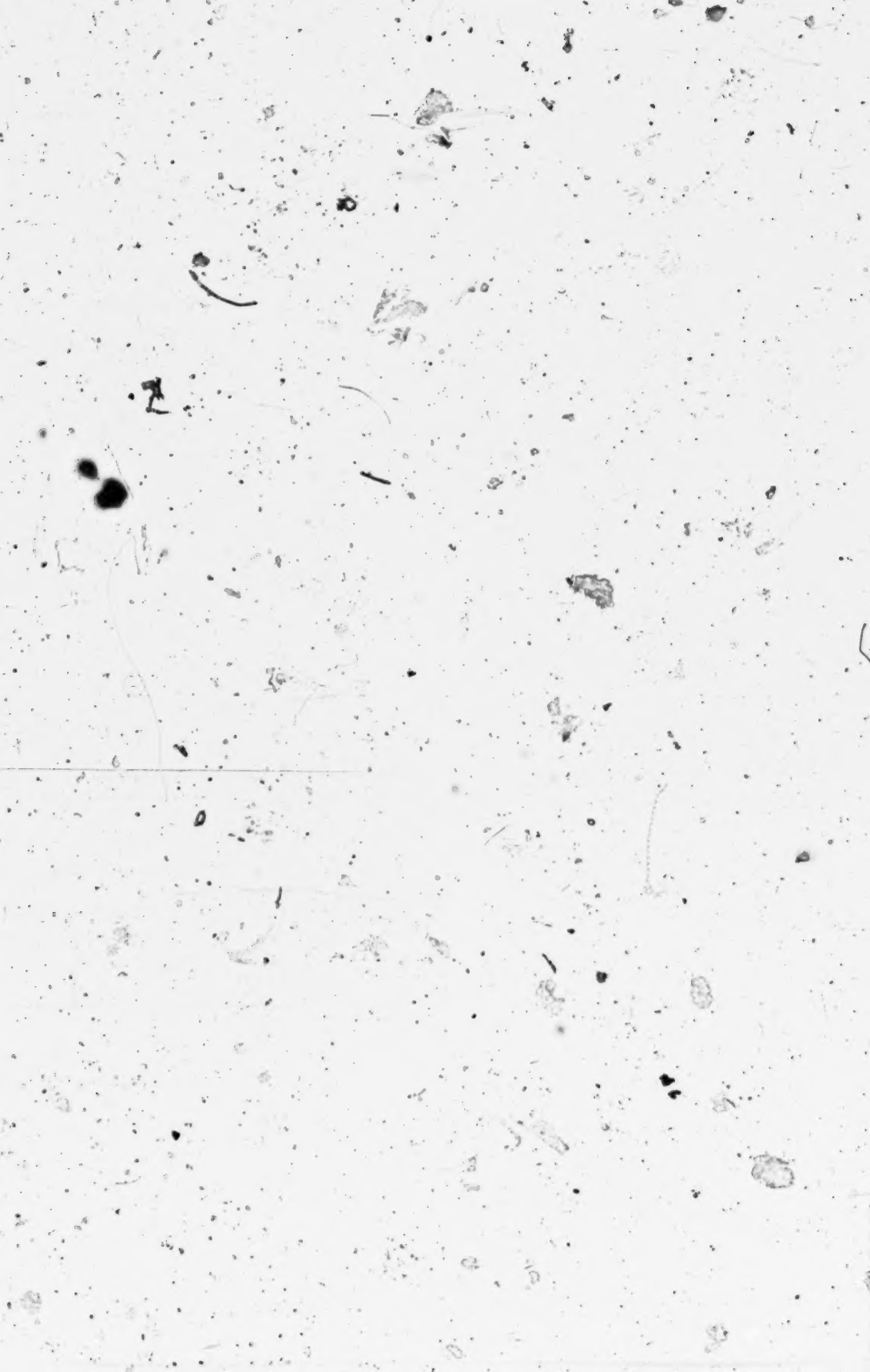
On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF FOR PETITIONER, THE UNITED GAS IMPROVEMENT COMPANY.

WILLIAM T. COLEMAN, JR.,
ROBERT W. MARIS,
RICHARDSON DILWORTH,
HAROLD E. KOHN,
2635 Fidelity-Philadelphia Trust Bldg.,
Philadelphia, Pa.,
Attorneys for Petitioner.

DILWORTH, PAXSON, KALISH, KOHN & DILKS,
Of Counsel.

International, 711 So. 50th St., Phila., Pa. 19143



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 644.

THE UNITED GAS IMPROVEMENT COMPANY,
Petitioner,

v.

CONTINENTAL OIL COMPANY, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF OF PETITIONER, THE UNITED GAS IMPROVEMENT COMPANY.

OPINIONS BELOW.

The Opinion of the Court of Appeals for the Fifth Circuit (R. 1277) is reported at 336 F. 2d 320 (5th Cir. 1964). The Opinions and Orders of the Federal Power Commission, reviewed by the Court of Appeals (R. 962-84, 1136-39 and 1223-33), are reported at 29 FPC 249 (1963), 29 FPC 692 (1963), and 30 FPC 153 (1963).

JURISDICTION.

The judgment of the Court of Appeals for the Fifth Circuit was entered on August 3, 1964 (R. 1289). The Petition for a Writ of Certiorari was filed on October 31, 1964 and granted on January 18, 1965 (R. 1292), — U. S. —. At the same time a Petition for Certiorari filed by the Federal Power Commission, attacking the same judgment on similar grounds, was granted and the cases consolidated for argument (R. 1292), — U. S. —. The jurisdiction of this Court rests on 28 U. S. C. § 1254(1) and § 19(b) of the Natural Gas Act. 15 U. S. C. § 717r(b).

STATUTE INVOLVED.

The statutory provisions involved are contained in Sections 1(b), 7 and 19(b) of the Natural Gas Act, 52 Stat. 822 (1938), as amended, 15 U. S. C. §§ 717(b), 717f, 717r(b). The statutory language in these sections relied on herein is as follows:

"NECESSITY FOR REGULATION OF NATURAL-GAS COMPANIES

Section 1. . . . (b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

* * *

SEC. 7. (a) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden

will be placed upon such natural-gas company thereby: *Provided,* That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

(c) No natural-gas company or person which will be a natural gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate with-

but requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such application, the continuance of such operation shall be lawful.

In all other cases the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission; and the application shall be decided in accordance with the procedure provided in subsection (e) of this section and such certificate shall be issued or denied accordingly: *Provided, however,* That the Commission may issue a temporary certificate in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate, and may by regulation exempt from the requirements of this section temporary acts or operations for which the issuance of a certificate will not be required in the public interest.

(d) Application for certificates shall be made in writing to the Commission, be verified under oath, and shall be in such form, contain such information, and notice thereof shall be served upon such interested parties and in such manner as the Commission shall, by regulation, require.

(e) Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition cov-

ered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

* * *

REHEARING; COURT REVIEW OF ORDERS.

Section 19 . . . (b) . . . The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. . . ."

QUESTIONS PRESENTED.

Producer-respondents in 1957 entered into sales contracts, conceded by all to be subject to Commission jurisdiction, with interstate pipeline-respondent at "out-of-line" initial price levels which, under then-existing Federal Power Commission precedent, were not subject to Commission regulatory scrutiny under § 7 of the Act with respect to the initial price. When the courts overturned this Commission precedent and held that under § 7 of the Act the Commission was required to scrutinize initial prices prior to certification, producer-respondents recast their sales transaction with interstate pipeline-respondent into a new form: bulk sale of the gas reserves in place for a lump sum adjusted to actual volumes of gas. The Commission found this sale to have the same effect as the originally planned sales, to be actually a sale of gas for resale in interstate commerce, and to be subject to effective price regulation. This Commission determination was reversed by the Court of Appeals. The questions presented therefore are:

(1) Was the Commission correct in finding that the subject transaction constituted a "sale in interstate commerce of natural gas for resale" which was therefore subject to its jurisdiction under § 1(b) of the Natural Gas Act?

(2) Did the Court of Appeals err in expanding the exemption for "production and gathering" contained in § 1(b) of the Natural Gas Act so as to nullify Commission jurisdiction over what the court below itself recognized to be a sale of natural gas in interstate commerce for resale?

(3) Did the Court of Appeals err by upsetting the Commission's finding that the subject natural gas sale transaction in its present form should not be certificated on the basis of the existing record?

STATEMENT OF THE CASE.

A. First Phase: The Original Sale Proposal.

On February 1, 1957, the four producer-respondents here, Continental Oil Company, General Crude Oil Company, M. H. Marr and Sun Oil Company, executed sales contracts, admitted by all parties to be subject to Commission jurisdiction, with pipeline-respondent, Texas Eastern Transmission Corporation (Texas Eastern), an interstate natural gas transmission pipeline, covering sales of gas from wells in the Rayne Field in South Louisiana. Texas Eastern carries gas from the Gulf area, including South Louisiana, to the Eastern Seaboard. The Rayne Field had been explored, drilled and developed as a unit by these producer-respondents under various leases from the landowners in the area (R. 208, *et seq.*; 386-88). Under these wholesale contracts Texas Eastern agreed to purchase the estimated 750 million Mcf of then-proven gas reserves in the Rayne Field (R. 5), and producer-respondents dedicated exclusively to Texas Eastern under these contracts a guaranteed minimum of 730 million Mcf of the Rayne Field reserves (R. 6). The contracts were for 20 years and the initial price fixed was 23.9¢ per Mcf, including tax reimbursement (R. 4-5, 130). The gas was to be paid for on the basis of the amount delivered to the pipeline during the billing period with provisions for minimum daily take requirements (R. 4).

In April, 1957, Texas Eastern applied for a certificate authorizing it to construct and operate a compressor station and connecting pipeline to transport the gas thus purchased from the Rayne Field to Opelousas, Louisiana, where the gas was to be delivered into its existing transmission lines. Concurrently, Continental and the other producers filed applications as required by § 7 of the Natural Gas Act for certificates to make these admittedly jurisdic-

tional sales of gas. At the time of the filings, of course, the developed field was not attached to Texas Eastern's or to any other interstate pipeline's system (Compare R. 395-98).

These related applications were noticed for hearing. The United Gas Improvement Company (Petitioner) [1] and other substantial Eastern seaboard customers of Texas Eastern intervened, as did the Public Service Commission of the State of New York. Intervenors were concerned—as they continue to be—with initial prices negotiated in the highly important South Louisiana area upon which intervenors are dependent for a substantial part of their natural gas supply. The initial price of 23.9¢ per Mcf which Texas Eastern proposed to pay for the Rayne Field gas was the highest price sought up to that time in South Louisiana. After hearing, the Examiner, over the protest of intervenors and the Commission's Staff, issued a decision on April 15, 1958, recommending unconditioned certification of the applications of the four producers (R. 367-405, 21 FPC 869-886).

While the producers' § 7 applications were pending before the Commission on exceptions by Petitioner and others to the Examiner's decision, the Court of Appeals for the Third Circuit decided the *"CATCO"* case, which set aside an order of the Commission granting unconditioned certification of gas sales by the CATCO producers (which include Continental Oil Company) from certain offshore Louisiana fields at an initial price of 22.4¢ per Mcf, including tax. *Public Service Comm'n v. FPC*, 257 F. 2d 717 (3rd Cir. 1958), *aff'd sub nom. Atlantic Ref. Co. v. Public Service Comm'n*, 360 U. S. 378.

The effect of the *CATCO* decision upon the present transaction is frankly described in a pleading filed by Continental Oil Company in a later phase of this case (R. 1014-

1. Under an agreement with the City of Philadelphia, The United Gas Improvement Company operates the municipally-owned Philadelphia Gas Works and related facilities. The gas works distributes 1035 Btu natural gas to some 600,000 customers in the City of Philadelphia. It also distributes gas to some 205,000 customers in other parts of Pennsylvania.

18). Therein Continental argues that just as this Court had permitted "confiscation" of producing properties in the *Interstate*[2] and *Colorado Interstate*[3] cases, so the Third Circuit and this Court in *CATCO* upset efforts of the Commission "striving to be fair in certifying new contracts for sales of new gas" (R. 1017) and presumably would have required "confiscation" of Continental's property herein. Thus seeing "the handwriting on the wall" (R. 1017), the producer-respondents rescinded their contracts with Texas Eastern and in July and August of 1958 and January, 1959, filed notices of withdrawal of their pending certificate applications (R. 406-10, 425).

B. Second Phase: The Revised Sale Proposal.

In September, 1958, Texas Eastern filed a petition to reopen the hearing and to amend its application (R. 411-22). Texas Eastern was now the only applicant, since the Commission had granted withdrawal of three producer certificate applications and had the fourth request for withdrawal under consideration (R. 406-10, 464). Texas Eastern's modified application called for certain minor changes in the design of its proposed pipeline facilities; it also reflected a change in the method of divesting Continental and the other producers of their interest in the Rayne Field gas and investing Texas Eastern with it. Instead of the earlier dedication for 20 years of some 750 million Mcf of gas to be sold at a price of so-much-per-Mcf, Texas Eastern stated that it had negotiated to purchase from the same four producers the same proved and developed gas reserves formerly committed to the rescinded contracts for a down payment and 16 periodic payments.

To effectuate the transfer Continental and the other producers on December 4, 1958, executed contracts with Louisiana Gas Corporation, an affiliate created by Texas

2. *Interstate Gas Co. v. FPC*, 331 U. S. 682.
3. *Colorado Interstate Gas Co. v. FPC*, 324 U. S. 581.

Eastern for the purpose. Texas Eastern, by contract concurrently executed, obtained the right to acquire title to the leases from Louisiana Gas. Throughout the litigation, therefore, Texas Eastern has been treated as the real purchaser (R. 965).

This new agreement spelled out in somewhat more detail than the earlier contracts the geological features of the field. Five (later seven) separate reservoirs, or "sands," had been discovered and tested in the Rayne Field (R. 747-48). The lowest of these is called the Nodosaria "A" Sand, at a depth of 13,650 to 13,890 feet (R. 187). Sufficient wells had been drilled into all reservoirs to enable a geological consulting firm to map the reservoirs and attempt an estimate of the various reserves (R. 745-48).

Under the new agreement the producers transferred the aggregate of their leasehold rights received from the landowners covering all gas extracted from the seven reservoirs down to the base of the Nodosaria "A" Sand, together with wells and related equipment and rights of ingress and egress. At the same time, they reserved their "leasehold rights to the oil and other minerals, except gas and condensate" (R. 186-88). While the agreement thus appeared to pass to the pipeline the liquids, or "condensate," to be extracted from the gas, the conveyance was essentially one of form only, since it also provided that the producers would receive as "production payments" all proceeds from the sale of condensate in excess of the costs of operating the field and of processing expenses (R. 188-191). Thus the liquids which, on paper, Texas Eastern appears to have acquired under the lease agreement are actually resold to the producers under long term contracts and one part of the cash received by Texas Eastern therefrom is used to reimburse Continental for its costs in operating the field, while the remainder is rebated and distributed among all four producer-respondents.

The lease-sale agreement was executed with the understanding that Continental, which had previously operated

the field as agent for itself and the other producers, would continue to conduct all operations, including drilling, developing and managing the wells and well equipment. A "management agreement" to this effect was executed on July 27, 1959 (R. 827-858).

The consideration for the transfer from producer-respondents to the interstate pipeline of the proven gas reserves of the Rayne Field was $134,295,700 of which $12,420,500 was paid in cash and the balance in promissory notes payable in 16 annual installments (ending in 1975). These notes provided that should Texas Eastern determine that gas production should exceed a specified amount, similar in magnitude to the contemplated yearly take in the rescinded original sales contracts (compare R. 574 with R. 4), payment of the notes would be accelerated (in inverse order of maturity), under a formula geared to a stipulated quantity of gas production (R. 350-351). At the same time, no provision for deceleration was included and the burden of prepayment was thus shifted to Texas Eastern and its customers.

At the reopened proceeding dealing with Texas Eastern's revised application the Commission omitted the intermediate decision procedure and on June 23, 1959, issued its Opinion No. 322 (R. 449-67, 21 FPC 860), which unconditionally certificated Texas Eastern's proposal and in language and tenor appeared to confer general approval of the acquisition arrangement, including price.

C. First Court Appeal.

On July 23, 1959, the New York Commission applied for rehearing of Opinion 322 (R. 467). Four days thereafter the producer-respondents and Texas Eastern completed the transaction and Texas Eastern (which had constructed its short connecting line under temporary authority) began to receive Rayne Field gas into its interstate system. Subsequently, the Commission denied rehearing (R. 476) and the

New York Commission applied to the Court of Appeals for the District of Columbia, which set aside the certificate order and remanded for further proceedings. *Public Service Comm'n. v. FPC*, 287 F. 2d 143 (D. C. Cir. 1960) (R. 862). The court held that "the language and tenor of the Commission's Opinion and Order appear to confer general approval upon the terms of the acquisition agreement" without any basis in the evidence. Without considering the assumption, acquiesced in by all parties to the appeal, that the Commission had no jurisdiction over the agreement by which the gas was transferred, the court stated that, regardless of the transaction's form, the Commission had the power to inquire into the cost to Texas Eastern of acquiring the gas and to ascertain whether such costs would be consistent with the public convenience and necessity as required by § 7 of the Act.

D. Remanded Proceedings.

On remand the Commission reopened the proceeding, and Texas Eastern then undertook to present further evidence relative to its cost of acquiring the gas in the Rayne Field. Despite the passage of time and the experience gained in actual operation after July, 1959, Texas Eastern's evidence in the reopened proceeding, and its legal arguments as well, were substantially similar to those contained in the record found wholly inadequate by the Court of Appeals for the District of Columbia. This stage of the record was summed up by the Examiner in his opinion when he stated that it was "virtually impossible from the record, to determine the future costs to Texas Eastern for the Rayne Field since they are predicated upon assumptions and estimates" (R. 891-92): Looking at Texas Eastern's own estimates on their face the Examiner noted that "when all [Texas Eastern's] costs, and estimated costs are computed, the average cost becomes 24.34¢ per Mcf at 15.025 psia" (R. 896). The Examiner did not make a

cost finding on the basis of such a record, but instead on the basis of precedent and the record concluded that the price for the Rayne Field gas that would not be "out of line" at the time Continental and the other producers first negotiated with Texas Eastern was 18.5¢ per Mcf (R. 897). Therefore, he held that Texas Eastern should be granted a certificate under § 7 of the Act conditioned upon the inclusion of the Rayne Field gas in the pipeline's cost of service at an initial price of 18.5¢ per Mcf (exclusive of tax) and on its maintenance of special accounts providing "summary and detailed data respecting the cost of the Rayne Field gas to Texas Eastern" (R. 897-98).

The Examiner noted that Petitioner herein and the Commission Staff "vigorously contend in their briefs the Commission does have jurisdiction over such [Rayne Field gas] acquisitions" (R. 885) as it had over their predecessor sales. He concluded, however, that the Commission was without jurisdiction "until (1) the gas was connected to an interstate system of pipelines or (2) the gas was dedicated to a sale in interstate commerce" (R. 887).

On exceptions the Commission noted the history of the Rayne Field transaction and found the following facts with respect to it:

> "(1) Only gas in particular strata is conveyed; and the producers retain their interest in oil and other minerals;
>
> (2) In effect the transaction is for the sale of stripped gas inasmuch as the producers are to receive a production payment from Texas Eastern from the sale of natural gas liquids;
>
> (3) While the payment for the leases is represented by notes and spread over a 16-year period, the notes have an acceleration clause by which payment is accelerated if production is increased, so that Texas Eastern's payments would be geared to production;

(4) By a management agreement dated July 27, 1959, Continental agrees to operate the field, including drilling wells and managing all wells and equipment, and to deliver to Texas Eastern specified minimum daily quantities of gas; Texas Eastern will reimburse Continental for its expenses in operating the field but the assignment of the leases shows that the costs of operating the leases will be defrayed out of the production payments to which Continental is entitled;

(5) It is Louisiana Gas, not Texas Eastern which is liable on the notes to the producers, so that the true purchaser of the gas is not bound by the principal obligation of the lease sale transaction." (R. 973; 29 FPC at 254)

Based on these findings the Commission concluded that the principal effect of the transaction was to consummate transfer of gas between producer-respondents and Texas Eastern for consideration. The effect of the transfer was substantially identical with the potential effect of the earlier transaction between the same parties, which was concededly jurisdictional.

Since the gas acquired by Texas Eastern could only flow, and was in fact flowing, in interstate commerce and the price paid therefor had an impact only upon the price paid for gas by the interstate consumer, which Congress intended to be regulated nationally under the Natural Gas Act, the Commission held that the transaction was subject to its jurisdiction.

As the inevitable consequence of this holding, the Commission further held that certification of such a jurisdictional sale by producer-respondents was required by § 7 of the Act. And the record made by Texas Eastern was more than ample to demonstrate that the transaction before it was not susceptible of effective regulation. By its form it compelled a "one shot" exercise of regulatory scrutiny on the basis of estimates and assumptions seriously called in

question by cross-examination. The Commission concluded that it would not be in the public interest to certificate the present sale in its bulk form on the basis of the existing record.

All the producer-respondents and the pipeline-respondent, Texas Eastern, filed petitions for rehearing which were denied, upon which they petitioned the Court of Appeals for the Fifth Circuit for review.

On August 3, 1964, that court reversed the Commission's jurisdictional finding and remanded the case to the Commission for further hearing and consideration of Texas Eastern's application alone since it held that the Commission had no jurisdiction over producer-respondents. The Fifth Circuit made no analysis of the transaction or of the statutory basis for jurisdiction. Instead the court's decision is predicated wholly on what it took to be the binding effect of an earlier decision of this Court, *FPC v. Panhandle Eastern Pipeline Co.*, 337 U. S. 498. The court below noted that in *Panhandle* this Court had classified the leaseholds there involved as being part of the "physical activities, facilities and properties" used in production and gathering. Thus, reasoned the court below, they fall within that part of § 1(b) of the Natural Gas Act which exempts "the production or gathering of natural gas" from Commission's jurisdiction. The court below then examined the "Assignment and Conveyance" between the producer-respondents and Texas Eastern and disagreed with what it erroneously took to be the Commission's conclusion—that the document embodied exclusively a sale and was not "really" a lease as the term was used in *Panhandle*. Therefore, the court below found no occasion to consider the legal principles which had actually correctly governed the Commission's decision, those applicable in the common situation in which the "physical activities, facilities and properties" used in production and gathering are the instrumentalities of a sale of gas in interstate commerce—which is subject to the Commission's jurisdiction.

SUMMARY OF ARGUMENT.

The basic issue posed herein is whether the present lease sale transaction by which the rights to the developed gas reserves were transferred from the producers to the interstate pipeline in fact embodies a sale of natural gas for resale in interstate commerce, and thus falls within the broad jurisdictional grant in § 1(b) of the Act, over all sales of natural gas for resale in interstate commerce, *Phillips Petroleum Co. v. Wisconsin*, 347 U. S. 674, or whether the transaction is, solely by virtue of the lease form chosen by the parties, so materially transformed into a local activity, facility or property of production as to remove it from the ambit of the basic broad grant and draw it within the narrow exemption. This is a question which cannot be resolved by any examination of local law of sales or real property, which varies from state to state, but must be derived from a thorough analysis—such as that made by the Commission—of the facts and effect of the transaction in the light of the broadly remedial Congressional intent as interpreted by this Court. The present transaction involves the very type of transfer of interest in gas from producer to interstate pipeline which Congress intended, by its grant of jurisdiction in § 1(b) over "sales in interstate commerce of natural gas for resale," to subject to uniform federal regulation. The practical effect of the present bulk sale and its impact upon the consumer is identical with other admittedly jurisdictional sales. Whether gas is transferred from the producer to the interstate pipeline by the producer's agreeing to dedicate the reserves for twenty years and the pipeline's agreeing to pay for the gas as delivered or instead by the producer's immediately transferring its rights to all of the gas in place to the interstate pipeline and the pipeline's committing itself to pay a sum commensurate with the estimated reserves, there is a sale for resale in interstate commerce. There

is no rational policy reason why Congress should have intended to exempt one and subject the other to regulation. All such sales by reason of their effect in transferring gas into interstate commerce, are wholly interstate in economic impact, not arguably local in impact like the transfer of undeveloped leases to a producer for intrastate sale which was the subject of this Court's pre-*Phillips* decision in *FPC v. Panhandle Eastern Pipe Line Co.*, 337 U. S. 498.

The opinion of the court below erroneously applied this Court's *Panhandle* decision. The *Panhandle* case dealt with a transfer of undeveloped leases from a certificated jurisdictional interstate pipeline company to a producing company bound by contract to sell *intrastate* only. The jurisdictional issue raised and decided there involved the Commission's control over a non-jurisdictional activity in order to effectuate §§ 4, 5, 7 and 16 of the Act in the light of the "production and gathering" exemption of § 1(b). In other words, the Commission claimed "protective jurisdiction." The court below erroneously read *Panhandle* as conclusively classifying all lease transfers (whether of developed or undeveloped gas reserves) as "facilities of production" regardless of their potential status under other sections of the Act which were not considered in that case. Thus the court below never reached or decided the central question herein of whether the subject transaction embodied a sale within the meaning of the affirmative jurisdictional grant contained in § 1(b) of the Act, regardless of whether or not it also embodied certain *bona fide* indicia of a sale of leases. Instead of resolving this crucial issue, the opinion below dealt exclusively with a spurious question, which it misconstrued the Commission's opinion and brief as raising, of whether the lease terms herein were sham under prevailing concepts of local sales and conveyancing laws. Citing various treatises on these subjects the court below said that while gas was sold, there were also certain *bona fide* indicia of a lease sale present (passing of rights to wells and equipment, of ingress and egress and manage-

ment) and it therefore mechanically applied its erroneously broad construction of the *Panhandle* classification. The result thus reached is beside the point of the case and erroneous in its effect.

The effect of the expansion of *Panhandle* effected by the court below is to roll back the traditional effective scope of Commission regulation of interstate gas rates and to give to private parties the discretionary means to avoid such regulation. The rationale of the court below, which equates *all* leases and transactions involving them with facilities exclusively of production within § 1(b)'s narrow exemption, led to this unforeseen and unfortunate result. It is based on a serious misreading of the *Panhandle* case, which should be reversed and the decision of the Commission should then be affirmed.

Finally, the Commission's conclusion as a matter of discretion not to grant Texas Eastern's application under § 7 of the Act for certification of the subject transaction in its existing bulk form was supported by the record and should be affirmed.

ARGUMENT.

A.

The Subject Transaction Was a Sale in Interstate Commerce of Natural Gas for Resale Subject to Commission Regulation Under the Natural Gas Act.

Section 1(b) of the Natural Gas Act provides:

> "*The provisions of this act shall apply* to the transportation of natural gas in interstate commerce, *to the sale in interstate commerce of natural gas for resale* for ultimate public consumption for domestic, commercial, industrial or any other use, *and to natural-gas companies engaged in such* transportation or *sale, but shall not apply* to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or *to the production or gathering of natural gas.*" (Italics added.)

This Section confers on the Federal Power Commission a broad grant of authority over all sales of natural gas from producers to pipelines in interstate commerce for resale. Though it was not strictly needed, Congress inserted in § 1(b) a proviso that the Commission's jurisdiction did not cover activities solely relating to production or gathering of natural gas. This proviso, however, does not limit the affirmative grant of Commission jurisdiction over sales in interstate commerce. As pointed out in the House Report on the Bill which became the Natural Gas Act, the exemptive clause in § 1(b) was clarifying in nature only: any activity which would be solely a part of production or gathering of natural gas—such as proration of gas, unitization of fields, well spacing, secondary recovery and so forth—would necessarily not involve sales in interstate commerce. The House Report states:

"The quoted words [of the exemption] are not actually necessary, as the matters specified therein could not be said fairly to be covered by the language affirmatively stating the jurisdiction of the Commission, but similar language was in previous bills, and, rather than invite the contention, however unfounded, that the elimination of the negative language would broaden the scope of the act, the committee has included it in this bill." H. R. Rep. No. 709, 75th Cong., 1st Sess.[4]

In the leading case construing the scope of the affirmative grant of jurisdiction, *Phillips Petroleum Co. v. Wisconsin*, 347 U. S. 672, this Court indicated that the grant intended by Congress was broad, stating:

". . . [W]e believe that the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of *all* wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company." 347 U. S. at 682. (Italics added.)

See also *Colorado Interstate Gas Co. v. FPC*, 324 U. S. 581; *Interstate Gas Co. v. FPC*, 331 U. S. 682. Since *Phillips* the Commission has regulated all such sales and its action has been sustained by various Courts of Appeals. *J. M. Huber v. FPC*, 236 F. 2d 550 (3rd Cir. 1956), *cert. denied*, 352 U. S. 971; *Saturn Oil & Gas Co. v. FPC*, 250 F. 2d 61 (10th Cir. 1957), *cert. denied*, 355 U. S. 956; *Deep South Oil Co. v. FPC*, 247 F. 2d 882 (5th Cir. 1957), *cert. denied, sub nom. Humble Oil & Ref. Co. v. FPC*, 355 U. S. 930; *Continental Oil Co. v. FPC*, 266 F. 2d 208 (5th Cir. 1959), *cert. denied*, 361 U. S. 827. The present case is therefore controlled by the statutory language granting jurisdiction over

4. The Senate Report adopted and reprinted the House Report on the Bill, S. Rep. No. 1162, 75th Cong., 1st Sess.

sales in interstate commerce for resale, and the bulk form of the sale has no statutory significance on the issue of jurisdiction.

Prior to the present case the Commission had never been faced with the precise factual situation presented herein by the revised proposal: the Rayne Field, at the time of the lease transfer between the producers and the pipeline, was a developed, large-scale gas-condensate field. It had been explored and tested to the point where the producer-respondents could negotiate to make contracts for immediate wholesale sales of gas, commit them for 20 years and support them by dedication of specified reserves. At that point, as to the gas underlying the field, the producer-respondents had the exclusive right to shut it in, or to produce and sell it in intrastate commerce or in interstate commerce as they saw fit. Then, for a given amount of money, they conveyed all their rights pertaining to the gas to Texas Eastern, an interstate pipeline, and Texas Eastern has exercised its newly acquired rights to take the gas and to transport it in interstate commerce for resale for ultimate public consumption.

The court below, because of its erroneously broad reading of the *Panhandle* case, was misled by lease elements in the transaction and treated it in terms of conventional property law. It construed the arguments of the Commission below as being predicated upon an attempt to show that the present transaction was a sham, that it was not "really" a lease. 336 F. 2d at 324.

The court found this spurious issue easy to resolve. It stated that the " 'Assignment and Conveyance' not only passed rights to the gas, but also passed rights to wells and related production equipment and rights of ingress and egress." *Ibid.* It further noted that the various other limitations on the transfer were not unusual to lease transfers.[5] It is not Petitioner's purpose to dispute these points,

5. In so deciding it relied upon various treatises and articles dealing with local conveyancing law. 336 F. 2d at 325.

for it is clear that they are not conclusive of, or even relevant to, the issue presented to this Court. If they were, federal jurisdiction would have passed from the hands of Congress to those of the parties and the affirmative grant of jurisdiction over sales of natural gas in interstate commerce for resale contained in § 1(b) would yield to an expansion of the exemptive language contrary to the intent of Congress and this Court's decision in *Phillips*.

When the court below recognized that the transaction passed "rights to the gas," 336 F. 2d at 324, it touched the crux of the case, although the court failed to give it appropriate legal significance. The party controlling rights to gas which is developed and ready for production controls the gas and is the beneficiary of any value it may have. Whether the sale is viewed, by convention, as being consummated below the well-head, with title, or whatever interests the parties have, passing "in the ground," or at the well-head, it is a sale of gas and the type of transaction contemplated by the phrase "sale of natural gas" in § 1(b) of the Act.

Because of its volatile physical nature, gas can never be made available above the ground in more than small quantities in an enclosed stream at a given time. This physical limitation does not prevent the contracting for wholesale sales of the commodity, between producer and pipeline and between pipeline and distributor, and the point on the continuous volatile stream at which title, or whatever right parties have in the molecules, is treated as passing, is a convention for purposes of the various legal consequences which turn on title. In many states, including Texas, title is treated as attaching to minerals in the ground (*Cf.* R. 723). It was precisely such wholesale sales of gas that the Natural Gas Act was enacted to regulate. Congress clearly did not intend federal jurisdiction and regulation to depend on the particular state in which the gas might be located or the legal skill of private parties in manipulating the convention of title.

The fact that in addition to selling gas the producers here have relinquished other rights (to wells, equipment, ingress and egress) for additional consideration, does not alter the practical effect of the transaction relating to the gas molecules. It means only that the producers sold gas *plus* other personal property. The adding of the plus can in no way change the jurisdictional status of the sale of the gas. The Commission has no jurisdiction over the sale of well equipment or over operating decisions whether and where to drill or deepen wells, to use secondary recovery or recycling, or to regulate volume of production. Therefore it is irrelevant to federal jurisdiction how the production activities are handled. They are the subject of the exemption in § 1(b) and are under state regulation. The price charged by the producer and paid by the interstate pipeline for molecules of gas acquired, however, is subject to federal regulation. *Phillips Petroleum Co. v. Wisconsin, supra.* That is the decisive factor in the present case.

The reasons for this jurisdiction have long been clear from the legislative history of the Act and the decisions of this Court. As early as 1947 in *Interstate Natural Gas Co. v. FPC*, 331 U. S. 682, this Court pointed out:

> "All the gas sold in these transactions is destined for consumption in States other than Louisiana. Unreasonable charges exacted at this stage of the interstate movement become perpetuated in large part in fixed items of cost charged subsequent purchasers of the gas, including the ultimate consumer. It was to avoid such situations that the Natural Gas Act was passed." 331 U. S. at 692-93.

See also *Phillips Petroleum Co. v. Wisconsin, supra* ("Protection of consumers against exploitation at the hands of natural gas companies was the primary aim of the Natural Gas Act"); *cf. Atlantic Ref. Co. v. Public Service Comm'n*, 360 U. S. 378, 388 ("The Act was so framed as to afford

consumers a complete, permanent and effective bond of protection from excessive rates and charges."); *FPC v. Transcontinental Gas Pipe Line Co.*, 365 U. S. 1, 19 ("[I]t is . . . clear that Congress did not desire that an important aspect of this [natural gas] field be left unregulated.").

Any argument that the exercise of such jurisdiction will constitute an expansion of federal authority into new areas and areas of local interest places unjustified stress on labels such as "lease" and ignores the precise facts of the present case. The present exercise of Commission jurisdiction is over a transaction which is clearly jurisdictional —the commitment and transfer of gas wholesale, but by physically limited delivery, from the developer of a gas field to an interstate pipeline for delivery interstate. Any "gap" forbidding Commission regulation of such a transaction would not be one created or intended by Congress or by this Court in *Panhandle*.[6] It would be one of the parties' own making. The decision of the Commission intended to eliminate this influence of private parties and viewed jurisdiction in terms of the physical facts of the transaction and the intention of Congress expressed in clear language. *Cf., California v. Lo-Vaca Gathering Co.*, — U. S. —, 85 Sup. Ct. 486. That the State of Louisiana exercises no regulatory authority over the price aspects of the subject sale transaction is another indication of the correctness of this Commission decision, *FPC v. Transcontinental Gas Pipe Line Co., supra* at pp. 19-20. The Commission's decision should be affirmed.

B.

The Panhandle Case.

The above analysis makes it clear that this Court's *Panhandle*[7] opinion, which predates *Phillips*, has no bearing on the jurisdictional status of the producer-interstate pipe-

6. *FPC v. Panhandle Eastern Pipe Line Co.*, 337 U. S. 498.
7. *Ibid.*

line transaction here under scrutiny. For there is nothing in *Panhandle* which changes the fact in the case at bar: that since gas was transferred from the producers to the interstate pipeline for resale it is subject to Commission jurisdiction pursuant to § 1(b). In the *Panhandle* case, Panhandle Eastern Pipe Line Company, an interstate pipeline, was a "natural gas company" within the meaning of § 1(b) of the Act, as a company which transported natural gas in interstate commerce. This determination was made long prior to the litigation in that case. As such, Panhandle had sought and received certificates of public convenience and necessity from the Commission to build certain facilities, to operate other facilities and to make sales. To obtain such certificates it relied in part upon potential reserves from certain undeveloped leases. As a natural gas company, Panhandle was subject under §§ 4 and 5 of the Act to regulation of its rates on the basis of a rate base comprehending all its property used and useful in its natural gas business.

The controversy in the *Panhandle* case, in contrast to that in the present one, turned upon the extent of the Commission's authority to go beyond its certificating and rate-making function and to interfere with the management decisions of Panhandle dealing with its property, where such dealing might have a significant indirect effect upon those Commission functions, even though the transaction complained of was not a sale of gas in interstate commerce for resale.

Panhandle proposed to alienate certain of its leased properties. The transfer was to a producing affiliate of the pipeline, which was bound by contract to develop the leases and sell the gas therefrom entirely in the intrastate market in Kansas. The Commission believed that the alienation of the potential reserves represented by those leases would seriously impair the ability of the interstate pipeline to perform in accordance with its certificate of public convenience and necessity, which had been based in part upon those

very reserves. Therefore the Commission ordered a hearing into the effect of the lease transfer. However, the date for transfer of the leases was approaching and, to preserve the status quo, the Commission asked a United States District Court to restrain the pipeline company temporarily from completing the transaction until after the Commission had carried out its legitimate investigation.

The District Court refused the restraining order and was affirmed by the Court of Appeals for the Third Circuit, which held the leases on undeveloped gas property to be a "facility" of production and therefore exempt from Commission jurisdiction under § 1(b). *FPC v. Panhandle Eastern Pipe Line Co.*, 172 F. 2d 57 (3d Cir. 1949).

The Commission appealed to this Court. It relied on §§ 4, 5, 7 and 16 of the Act. The thrust of its argument was that effective exercise of its regulatory powers under those Sections could only be carried out if it had control over Panhandle's disposition of the subject matter of the regulation—which included leases on undeveloped gas properties, as well as pipe, facilities and other tangible assets. This highly controversial question of "protective" jurisdiction was resolved against the Commision by a narrow majority of this Court.

The present case, in contrast to *Panhandle*, involves a transfer of fully developed leases from producers to an interstate pipeline and the gas to be extracted from the properties is to flow entirely in interstate commerce. In the present case the Commission found a sale of gas in interstate commerce and is defending that finding in this Court, whereas, in *Panhandle* no such finding was made. In fact, no such issue was even raised, nor could it have been, since the gas involved there was destined for intrastate commerce. The decision by this Court in *Panhandle* as to the extent of the Commission's power to protect its authority under §§ 4, 5, and 7 to regulate a natural gas company can throw no light whatsoever on the entirely

different question raised herein of the existence of a jurisdictional sale in interstate commerce under § 1(b) of the Act.

On this question of statutory construction the closest precedent is not *Panhandle*, but those cases in which this Court and others construed an alleged conflict between the broad basic jurisdictional grant in § 1(b) and the limited exemption therein. *E.g., Phillips Petroleum Co. v. Wisconsin*, 347 U. S. 672; *Interstate Gas Co. v. FPC*, 331 U. S. 682; *Colorado Interstate Gas Co. v. FPC*, 324 U. S. 581; *Saturn Oil & Gas Co. v. FPC*, 250 F. 2d 61 (10th Cir. 1957), *cert. denied*, 355 U. S. 956; *Continental Oil Co. v. FPC*, 266 F. 2d 208 (5th Cir. 1959), *cert. denied*, 361 U. S. 827. Also relevant to the present controversy is this Court's recent decision in *California v. Lo-Vaca Gas Co.*, — U. S. —, 85 Sup. Ct. 486, in which the opinion states:

> "Attempts have been made by one convention or another to convert a local transaction into one of interstate commerce [cite] or to make a segment of interstate commerce appear to be only intrastate. [cite] But those attempts have failed."

This Court has not permitted private parties by contract to usurp the power of Congress to fix jurisdictional limits.

An analysis of *Panhandle* shows that the important issues raised in the present case were necessarily not raised or decided therein. At the same time the very different issues decided in Panhandle do not control the present case.[8] Thus the present case is one of first impression in

8. Some of the language of the *Panhandle* opinion, which discusses in broadly couched terms the intent of Congress and the scope of the exemption contained in Section 1(b), was not necessary to a decision of the precise issues before this Court in that case. This language amounted to dictum and is directly counter to the construction of Congressional intent given the Natural Gas Act by this Court in such subsequent leading cases as *Phillips Petroleum Co. v. Wisconsin*, 347 U. S. 672, *Atlantic Ref. Co. v. Public Service Comm'n.*, 360 U. S. 378, and *Sunray Mid-Continent Oil Co. v. FPC*, 364 U. S.

the sense that it represents the first call upon the Commission to regulate a bulk sale of natural gas. Under the clear language of the statute and the decisions of this Court such a sale is subject to the Commission's jurisdiction.

C.

The Treatment of the Existing Lease Sale Transaction Is Supported by the Record.

In addition to its finding of jurisdiction, the Commission made the following independent finding of fact in the exercise of its expertise under § 7(e) of the Act:

> "It is clear from the record of this case that it is not in the public interest for this Commission to certificate a transaction such as the one presented to us on this record." 29 FPC at 256 (R. 976).

This Court in *Atlantic Ref. Co. v. Public Service Comm'n.*, 360 U. S. 378, reversed the Commission for failure to give "careful scrutiny" to the initial price of a sale. The Commission found that the present sale in its bulk form defied such scrutiny on the basis of the record made by Texas Eastern. In the earlier phase of this case the Court of Appeals for the District of Columbia Circuit reversed the Commission for approving the present transaction on the basis of the following criteria:

> ". . . [W]e have considered all the circumstances pertaining to the company's acquisition of the Rayne Field leases and the effects of this transaction on the need and convenience of the public proposed to be served, including the extent and accessibility of

137. One suspects that it is this broad language upon which respondents rely when urging the authority of *Panhandle* herein, rather than the precise holding of the case, which did not in any way involve the affirmative grant in § 1(b). If so, it is an unfounded reliance. This Court is not bound by the since-discredited dictum of a former bare majority, when the clear language and policy of the Act run contrary.

this gas supply; the benefits thereof in enabling Texas Eastern to meet consumer demands; the terms and conditions of the lease sale and purchase agreements including the price to Texas Eastern of the gas thereunder; the claimed savings accruing to Texas Eastern from acquiring the leases rather than purchasing the gas under gas purchase contracts; and the other factors present here." (R. 456)

At the reopened proceeding the evidence offered by Texas Eastern was directed solely to the same criteria. The Examiner found that whatever approach was used to calculate a unit price per Mcf for the gas, such price was out of line with contemporaneously executed gas sales contracts (compare R. 895-96 with R. 897). On the basis of such a record the Commission was amply justified in concluding that Texas Eastern had failed to show that the existing means of acquiring the Rayne Field gas was one which comported with the present and future public convenience and necessity. The public convenience and necessity standard of § 7 is one that looks to the future. It was well within the Commission's discretion to conclude here that the public interest did not require a situation in which Texas Eastern's customers were committed irrevocably to a fixed price for a substantial portion of their gas supply just at the time when an area rate proceeding investigating the just and reasonable rates for gas in South Louisiana was in progress which would determine the rate level—certainly a considerably lower one—which should prevail for that gas. The fact that a number of reasonable alternatives to the existing arrangement are possible, in bulk or unit form, any one of which would permit the type of regulation which would protect all parties, is a further factor justifying the Commission's discretionary refusal to certificate Texas Eastern's application based on that arrangement, even if the Commission lacked power to

compel the use of any specific alternative. *City of Pittsburgh v. FPC*, 237 F. 2d 741, 751 n.28 (D. C. Cir. 1956). The Commission's finding was proper and should be affirmed.

CONCLUSION.

The present case is of great importance to Petitioner not just for the potential impact one way or the other on the cost of Rayne Field gas, which will be reflected in the cost of purchased gas to Petitioner, but because it is that type of case which has far-reaching potential as adverse precedent. When the parties to the present transaction found the means to alter the form of a jurisdictional sale in such a way as to retain its economic substance, but to have the Commission at first accept its form as nonjurisdictional, they effected a "roll back" in the area of federal regulation that was soon widened by others. Four other similar transactions were soon after initiated: *Tennessee Gas Transmission Co., et al.*, Docket G-14562, *et al.* (Blocks 46 and 64, So. La.); *Tennessee Gas Transmission Co., et al.*, Docket CP61-106, *et al.* (Bastian Bay, So. La.); *Monterey Gas Trans., et al.*, Docket CP62-88, *et al.* (King Ranch, Texas); *Continental Oil Co., et al.*, Docket RI64-129 (Ship Shoal, So. La.). The trend was unmistakeable. Only the alertness of a re-constituted Commission after 1961 stood in the way of this erosion of consumer protection, the primary object of the federal statute. The court below, while ostensibly only applying mechanically a precedent of this Court, in effect would inadvertently condone a privately devised "gap" in the regulation of interstate sales by producers to interstate pipelines which makes and would make the "gaps" prevented in *FPC v. Transcontinental Gas Pipe Line Co., supra*, and *California v. Lo-Vaca Gathering Co., supra*, insignificant by comparison. For the reasons discussed in this brief, the legal basis of the decision of the Court of Appeals was erroneous

and should be reversed. Such a reversal will at the same time go far to safeguard for the future the traditional bounds of federal regulation of the sale of natural gas in interstate commerce.

For the foregoing reasons this Court should reverse the decision of the Court of Appeals for the Fifth Circuit and remand to that court with the order that the decision and Orders of the Commission embodied in its Opinions 378 and 378-A be affirmed.

Respectfully submitted,

WILLIAM T. COLEMAN, JR.,
ROBERT W. MARIS,
RICHARDSON DILWORTH,
HAROLD E. KOHN,
2635 Fidelity-Philadelphia Trust Bldg.,
Philadelphia, Pa.,
Attorneys for Petitioner.

DILWORTH, PAXSON, KALISH, KOHN & DILKS,
Of Counsel.

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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 693

FEDERAL POWER COMMISSION, PETITIONER

v.

M. H. MARR, SUN OIL COMPANY, CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL POWER COMMISSION

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit (R. 1278–1289) is reported at 336 F. 2d 320. The opinion and orders of the Federal Power Commission (R. 962–984, 1223–1233) are reported at 29 FPC 249 and 30 FPC 153.

JURISDICTION

The judgment of the court of appeals setting aside the Commission's order was entered on August 3, 1964 (R. 1289–1291). By order of Mr. Justice Black, dated November 2, 1964, the time for filing a petition for a writ of certiorari was extended to November 16,

1964 (R. 1291–1292). The petition was filed on that date and certiorari was granted on January 18, 1965 (R. 1293). The jurisdiction of this Court rests on 28 U.S.C. 1254(1) and Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b).

QUESTION PRESENTED

Whether the sale of a leasehold interest in proven natural gas reserves to an interstate pipeline company for use by the pipeline in supplying its interstate markets constitutes a sale of "natural gas" subject to the jurisdiction of the Federal Power Commission.

STATUTE INVOLVED

The Natural Gas Act, 52 Stat. 821, as amended, 15 U.S.C. 717–717w, provides in pertinent part:

Section 1(b):

> The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

* * * * *

Section 7(b):

> No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service ren-

dered by means of such facilities, without the permission and approval of the Commission first had and obtained, after due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future public convenience or necessity permit such abandonment.

Section 7(c):

No natural-gas company or person which will be a natural-gas company upon completion of any proposed construction or extension shall engage in the transportation or sale of natural gas, subject to the jurisdiction of the Commission, or undertake the construction or extension of any facilities therefor, or acquire or operate any such facilities or extensions thereof, unless there is in force with respect to such natural-gas company a certificate of public convenience and necessity issued by the Commission authorizing such acts or operations: *Provided, however,* That if any such natural-gas company or predecessor in interest was bona fide engaged in transportation or sale of natural gas, subject to the jurisdiction of the Commission, on the effective date of this amendatory Act, over the route or routes or within the area for which application is made and has so operated since that time, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission within ninety days after the effective date of this amendatory Act. Pending the determination of any such applica-

tion, the continuance of such operation shall be lawful.

* * * * *

Section 7(e):

Except in the cases governed by the provisos contained in subsection (c) of this section, a certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operation, sale, service, construction, extension, or acquisition covered by the application, if it is found that the applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder, and that the proposed service, sale, operation, construction, extension, or acquisition, to the extent authorized by the certificate, is, or will be required by the present or future public convenience and necessity; otherwise such application shall be denied. The Commission shall have the power to attach the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

STATEMENT

This case involves the jurisdictional status, under Section 1(b) of the Natural Gas Act, of a sale of proven natural gas reserves in the Rayne Field in Louisiana to Texas Eastern Transmission Corporation, a pipeline, for use in supplying the pipeline's interstate markets. It arises out of Texas Eastern's application for a certificate of public convenience and

necessity, pursuant to Section 7 (c) and (e) of the Act, for facilities required to transport the gas from Rayne Field to points on the interstate pipeline system.

The Factual Background.—On February 1, 1957, Texas Eastern, which has an interstate natural gas transmission system extending from Texas to the Philadelphia-Newark area, executed conventional gas sales contracts, for primary terms of twenty years, with Continental Oil Company, Sun Oil Company, M. H. Marr, and General Crude Oil Company to purchase their natural gas production in the Rayne Field at an initial price of 23.9 cents per Mcf, including 1.3 cents per Mcf for reimbursement of State taxes. In April 1957, Texas Eastern applied for a certificate authorizing it to construct and operate a compressor station and pipeline needed to transport the gas from that field to Opelousas, Louisiana, where the gas was to be delivered into the existing pipeline system. At about the same time, the producers applied for certificates authorizing them to sell their gas to Texas Eastern. After a hearing, and despite objections to the 23.9 cent price by the Commission's staff and a number of intervenors, the examiner issued a decision on April 15, 1958, proposing to grant unconditional certificates to each of the applicants (R. 367–405).

On June 30, 1958, before the Commission had acted on exceptions to the examiner's decision, the Court of Appeals for the Third Circuit, in *Public Service Commission of New York* v. *Federal Power Commission*, 257 F. 2d 717, affirmed *sub nom. Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S.

378 (the *"Catco"* case), set aside an order of the Commission granting unconditional certificates for sales of gas from offshore Louisiana at 22.4 cents per Mcf (including a one cent tax reimbursement)—a figure 1.5 cents lower than the price to be charged Texas Eastern—on the ground that the price had not been justified.

Within a month after the court of appeals' decision in *Catco,* producers Sun, General Crude and Marr cancelled their original contracts with Texas Eastern and requested Commission approval for withdrawal of their certificate applications (R. 406–410).[1] In September 1958, Texas Eastern filed a petition to reopen the hearing and to amend its application (R. 412, 440).

The parties then formulated a new plan under which Texas Eastern was to construct essentially the same facilities as those previously proposed and was to receive into its interstate pipeline system the same volumes of gas (R. 965). The only difference was that Texas Eastern now agreed to acquire leasehold interests in the reserves which the producers had formerly committed to standard gas purchase contracts with Texas Eastern.

To effectuate the plan, the four Rayne Field producers or leasehold owners—Continental, Sun, Marr and General Crude—on December 4, 1958 entered into a contract (designated "Lease Sale Agreement") with Louisiana Gas Corporation, an intermediary created

[1] The contracts had permitted the producers to terminate their agreements since September 1, 1957 (*e.g.*, R. 103, 409).

for this transaction (R. 87, 965).[2] By a concurrent agreement Louisiana Gas gave Texas Eastern the right to acquire its title to the "Lease Sale Agreement." Consequently, Texas Eastern has been treated throughout this litigation as the real purchaser (R. 97, 965).

Under this agreement, the producers conveyed their leasehold rights to gas down to the base of the Nodosaria "A" Sand at a depth of from 13,650 to 13,980 feet, together with wells and related equipment, but reserved their "leasehold rights to the oil and other minerals, except gas and condensate," as well as to the gas and condensate below the Nodosaria "A" Sand (R. 186–188). While the agreement in terms conveyed the liquids or "condensate" to be extracted from the gas,[3] it also provided that the producers would receive as "production payments"[4] all proceeds from the sale of the condensate in excess of

[2] The officers of Louisiana Gas, referred to as an affiliate of Texas Eastern by the Commission (R. 965), were members of a law firm which represents Texas Eastern on a retainer basis. The capitalization of Louisiana Gas is $5,000, which was furnished by Texas Eastern without any note of indebtedness. (Tr. pp. 1555–1558.)

[3] Condensate is defined in the agreement as certain liquid and liquefiable hydrocarbons contained in the gas stream (R. 185).

[4] It was explained (R. 79) that a production payment is a type of security or retained interest frequently used in connection with loans of money under which repayment is to be made solely out of the hydrocarbons produced from the property when and as produced. No other personal responsibility is assumed by the borrower.

the costs of operating the leasehold and of processing expenses (R. 188–191).[5]

The lease sale agreement between the producers-assignors and Texas Eastern was executed with the understanding (R. 828–829) that Continental, which had previously operated the field for itself and the other producers, would continue to conduct all operations, including drilling, developing and managing the wells and well equipment. A "Management Agreement" so providing was signed on July 27, 1959 (R. 827–858).

Consideration for the conveyance was $134,395,700, of which $12,420,500 was paid in cash and the balance in promissory notes payable in sixteen annual installments (ending in 1975). If, at Texas Eastern's nomination, gas production exceeds a specified amount, payment of the notes is to be accelerated (in inverse order of maturity) in accordance with a prescribed formula (R. 350–351).

Although the exact amount of the recoverable reserves in the Rayne Field was a matter of controversy, they are admittedly substantial; Texas Eastern's estimate exceeds 900,000,000 Mcf (R. 966).

The lease sale agreement was expressly conditioned upon the issuance by the Federal Power Commission of certificates of public convenience and necessity authorizing the construction and operation of facili-

[5] The condensate is, in fact, being sold by Texas Eastern to the producers under long-term contracts which terminate when the production payments terminate. Thus, the producers buy the condensate and receive the net proceeds therefrom while Texas Eastern retains none of the net proceeds from its sale (R. 582–587).

ties required to take gas from Rayne Field and to transport it to the market area. Upon the issuance of certificates satisfactory to each party, the gas purchase contracts of February 1957 were to be cancelled (R. 173–175).[6]

First Proceedings on Lease Sale Plan.—The Commission granted Texas Eastern's request (*supra,* p. 6) to reopen the proceeding in order to consider the lease sale plan and, on June 23, 1959, issued an unconditional certificate to Texas Eastern for its proposed facilities. In issuing the certificate, the Commission overruled the objection of the New York Public Service Commission that the record did not adequately disclose the costs of the leases to Texas Eastern, a showing which, in New York's view, required evidence of the costs of the producers.

On July 23, 1959, the New York Commission applied for rehearing (R. 467). Four days later, the transfer of the gas rights under the leases was completed and Texas Eastern began to receive gas from Rayne Field (R. 888)—gas which it has since transmitted and sold at wholesale in interstate commerce. Subsequently, the Commission denied rehearing (R. 476). On review, however, the Court of Appeals for the District of Columbia Circuit set aside the certificate order and remanded the case for further proceedings. *Public Service Commission of New York* v. *Federal Power Commission,* 287 F. 2d 143 (R. 862–868). The

[6] The sellers, with the exception of Continental, had purportedly cancelled their contracts months prior to the execution of the lease sale agreement on December 4, 1958. See *supra,* p. 6.

court held that, without substantial evidentiary support, "the language and the tenor of the [Power] Commission's Opinion and Order appear to confer general approval upon the terms of the acquisition arrangement" (R. 865, 287 F. 2d at 145). On the assumption that the Commission had no jurisdiction over the lease sale, the court held that, regardless of the form of the transaction, the Commission was, at some time, required to consider fully the reasonableness of the acquisition costs to the pipeline (R. 866–867, 287 F. 2d at 146).

The Proceedings on Remand.—On remand, the Commission reopened the proceeding. It afforded Texas Eastern an opportunity to show the reasonableness of its acquisition costs but did not limit the proceeding to that issue. In his decision, the examiner found that it was "virtually impossible, from the record, to determine the future costs to Texas Eastern for the Rayne Field since they are predicated upon assumptions and estimates" (R. 891–892). Nonetheless, he arrived at the conclusion that "when all [Texas Eastern's] costs, and estimated costs, are computed, the average cost becomes 24.34¢ per Mcf at 15.025 psia" (R. 896). Finding that this price was out of line and that the "in-line" price was 18.5¢ per Mcf (R. 897), he held that Texas Eastern should be granted a certificate conditioned upon the inclusion of the Rayne Field gas in the pipeline's cost of service at an initial price of 18.5¢ per Mcf (exclusive of taxes) and on its maintenance of supplemental accounts providing "summary and detailed data respect-

ing the cost of the Rayne Field gas to Texas Eastern" (R. 897–898).

While noting that the Commission's staff and one of the intervenors "vigorously contend in their briefs the Commission does have jurisdiction over such [Rayne Field Lease] acquisitions" (R. 885), the examiner held that the Commission was without jurisdiction "until (1) the gas was connected to an interstate system of pipelines or (2) the gas was dedicated to a sale in interstate commerce" (R. 887).

The Commission,[7] on exceptions, concluded that the jurisdictional issue was not foreclosed by its earlier action in the case, and held that the transfer of gas to Texas Eastern constituted a sale in interstate commerce for resale, whether technically in the form of a leasehold transaction or otherwise.[8] It reasoned that the "fact that the gas, which had been developed to an extent where reasonable estimates could be made as to available reserves," though in form a transfer of leasehold right plus equipment, closely resembled, in practical effect, the ordinary sale of gas. In this connection, it found (R. 973):

> (1) Only gas in particular strata is conveyed; and the producers retain their interest in oil and other minerals;
>
> (2) In effect the transaction is for the sale of stripped gas inasmuch as the producers are

[7] Commissioner Woodward, who did not participate in the original order and opinion, wrote a dissenting opinion to the order on rehearing.

[8] The Commission expressly refrained from dealing with either the transfer of other property rights or the operation of the producing properties, wells or the equipment used for production and gathering (R. 972).

to receive a production payment from Texas Eastern from the sale of natural gas liquids;

(3) While the payment for the leases is represented by notes and spread over a 16-year period, the notes have an acceleration clause by which payment is accelerated if production is increased, so that Texas Eastern's payments would be geared to production;

(4) By a management agreement dated July 27, 1959, Continental agrees to operate the field, including drilling wells and managing all wells and equipment, and to deliver to Texas Eastern specified minimum daily quantities of gas; Texas Eastern will reimburse Continental for its expenses in operating the field but the assignment of the leases shows that the costs of operating the leases will be defrayed out of the production payments to which Continental is entitled;

(5) It is Louisiana Gas, not Texas Eastern which is liable on the notes to the producers, so that the true purchaser of the gas [is] not bound by the principal obligation of the lease sale transaction.

Having decided that it had jurisdiction over the "in-place" sale of the Rayne Field gas reserves, the Commission concluded that it was not in the public interest to certificate the present transaction. It was not satisfied that the unit cost of the gas was reasonable or that it could be determined with reasonable accuracy. Rather than deny outright Texas Eastern's application, the Commission afforded it and the sellers an opportunity to revise their contractual arrangements so as to furnish assurance that the transactions,

already partially consummated would be consistent with the public interest (R. 978–979, 1228–1229).

The Court of Appeals for the Fifth Circuit set aside the Commission order, holding that the contracts transferred not only rights to gas, but also rights to wells and related production equipment and rights of ingress and egress. Reasoning that "these transfers were 'leases' as that term was used" in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, it concluded that the transaction was beyond the Commission's jurisdiction.[9] In reaching this result, it also construed this Court's decision in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, as limited to sales made after "production and gathering" had ended (R. 1287).[10]

[9] In view of its disposition of the case, the court found it unnecessary to reach the contention of petitioners below that the Commission was barred from considering its jurisdiction over the transaction as producer sales because the Court of Appeals for the District of Columbia had disposed of the earlier appeal on the basis of the absence of Commission jurisdiction over the sale as such.

[10] Since the decision below, the Tenth Circuit, in setting aside another Commission determination of jurisdiction with respect to a similar lease sale transaction, concluded (1) that the conveyance was not a sale of gas and (2) that the transfer was a lease and hence exempt. *Pan American Petroleum Corp.* v. *Federal Power Commission*, 339 F. 2d 694, setting aside in part *Tennessee Gas Transmission Co.*, 30 FPC 1477. Unlike the Fifth Circuit, the court did not construe *Phillips* as relating to less than all sales at wholesale.

The Commission is petitioning for certiorari in that case.

SUMMARY OF ARGUMENT

1. Section 1(b) of the Natural Gas Act gives the Federal Power Commission jurisdiction over "the sale in interstate commerce of natural gas for resale," but excepts "the production or gathering of natural gas." In *Phillips Petroleum Co.* v. *Wisconsin,* 347 U.S. 672, 685, the affirmative grant of jurisdiction was held to cover all sales at wholesale of natural gas in interstate commerce, whether by a pipeline or by an independent producer, and whether occurring before, during, or after transmission in interstate commerce. The question here is whether the Commission was warranted in treating the sale in question, although it was in form a transfer of an interest in real property (the sale of a leasehold), as constituting in substance a sale of gas for purposes of the Natural Gas Act.

That question depends, not upon the law of conveyancing, but upon the economic reality of what the parties have done. Cf. *California* v. *Lo-Vaca Gathering Co.,* No. 46, this Term. Moreover, the expert agency chosen to administer the statute has considerable room for judgment in giving concrete meaning and content to the statutory terms. *Gray* v. *Powell,* 314 U.S. 402, 413; *National Labor Relations Board* v. *Hearst Publications,* 322 U.S. 111, 131. In the present case, the elements which marked this transaction as essentially a sale of gas, at least from the standpoint of the objectives of the regulatory statute, are so pronounced as to leave no serious question that the Commission was well within the bounds of its authority.

In substance, a group of producing companies transferred to Texas Eastern, an interstate pipeline company, their right to take all of the gas suitable

for pipeline use from a proven, substantial, and well defined body of gas reserves—a body of reserves from which the gas was ready to flow upon the turn of a valve and from which it has in fact been flowing in interstate commerce from the date of the acquisition. In terms of practical effects and regulatory objectives, the transaction is essentially the same as a conventional sale at the wellhead; and it is not disputed that all of the gas is destined for use in supplying the pipeline's markets in States other than Louisiana.

Such differences as here may be between an "in-place" sale of gas and a wellhead sale do not require a difference in regulatory treatment. In all events, those differences are minimized in the present case by special provisions of contract—provisions calculated to change the form of the arrangement and to avoid price regulation, but otherwise to give the parties the same essential bargain that they had under their prior conventional agreement of sale.

2. If the transaction involved here was a sale in interstate commerce of gas for resale, it follows, under the authorities, that it is not within the exemption provided by Section 1(b) for "production or gathering." *Phillips Petroleum Co.* v. *Wisconsin, supra; Saturn Oil & Gas Co.* v. *Federal Power Commission,* 250 F. 2d 61, 68 (C.A. 10), certiorari denied, 355 U.S. 956. The decision below rests, in part at least, upon the erroneous premise that a sale of natural gas cannot be jurisdictional if it takes place before the production and gathering processes have run their course. This view is based upon a misin-

terpretation of the *Phillips* decision; was impliedly rejected by this Court in *Cities Service Gas Co.* v. *State Corporation Commission of Kansas*, 355 U.S. 391; and is contrary to prior court of appeals decisions.

The concepts of a "sale for resale" and that of "production or gathering" do not mark out mutually exclusive territories: a sale may occur before production or gathering is completed. The two statutory concepts can be reconciled by adopting the entirely plausible interpretation that the exemption relates to the facilities and processes involved in production or gathering, but not to sales of the kind affirmatively subjected to Commission jurisdiction, whatever the stage at which those sales occur.

The Fifth Circuit's reliance on *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, is misplaced. That case involved a quite different issue—namely, whether an interstate pipeline could, without the Commission's authorization, make any disposition whatever of undeveloped leases and reserves which had been included in its rate base and which it had relied upon to support its applications for certificates of public convenience and necessity. The Court had no occasion to consider the question presented here—*i.e.*, whether a transfer of proven reserves is tantamount to a "sale of natural gas"—since the gas to be produced from Panhandle's transferred leases was in no event intended for resale "in interstate commerce," but was to be consumed within the producing State.

3. We show, finally, that the decision below would provide a simple mechanism for avoiding effective regulation, State or federal. The present sale, involving reserves estimated at nearly a billion Mcf, is by no means an isolated example of attempts to use the device of an "in-place" sale to avoid effective Commission regulation of the price at which gas is purchased for the interstate market. If such sales were not subject to direct Commission regulation, an "attractive" and, we apprehend, ever-widening gap in the "regulatory system" would be created. Cf., *Lo-Vaca, supra; Federal Power Commission* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1.

ARGUMENT

I. A SALE OF LEASEHOLD INTERESTS IN PROVEN RESERVES IS A SALE OF "NATURAL GAS" WITHIN THE MEANING OF SECTION 1(b) OF THE ACT AND THEREFORE SUBJECT TO COMMISSION JURISDICTION

Section 1(b) of the Natural Gas Act, *supra*, p. 2, gives the Federal Power Commission jurisdiction over "the sale in interstate commerce of natural gas for resale," but specifically excepts "the production or gathering of natural gas." In *Phillips Petroleum* v. *Wisconsin*, 347 U.S. 672, 685, the affirmative grant of jurisdiction was held to cover all sales at wholesale of natural gas in interstate commerce, whether by a pipeline or by an independent producer, and whether occurring before, during, or after transmission in interstate commerce. In reaching this conclusion, the Court emphasized (347 U.S. at 685) that the rates charged by an independent producer "may have a

direct and substantial effect on the price paid by the ultimate consumers" and that "[p]rotection of consumers against exploitation at the hands of natural-gas companies was the primary aim of the Natural Gas Act."

The question here is whether the Commission was warranted in treating the sale in question, although it was in form the transfer of an interest in real property (the sale of a leasehold), as constituting in substance a sale of gas for purposes of the Natural Gas Act.[11]

We start with the proposition that the question whether this transaction was a "sale" of "natural gas" within the meaning of this Act depends not upon the law of conveyancing, but upon the economic reality of what the parties have done. Earlier this Term, the Court had occasion to reiterate, in a different though related context, that the Commission's jurisdiction under the Gas Act turns upon the actualities and is not governed by artificial contractual provisions. *California* v. *Lo-Vaca Gathering Co.*, No. 46, this Term, decided January 18, 1965. So, too, in the present case one must examine the practical incidents of the transaction in light of the overriding objectives of the Act in order to determine whether it comes within the statutory terms. The fact that State conveyancing law may regard it as a transfer of real

[11] If the transaction constitutes a sale of gas within the Commission's jurisdiction for which approval has not been sought and obtained, it follows, of course, that the Commission properly denied, as not within the public convenience and necessity, an application for authority to construct facilities designed solely for the purpose of carrying that gas.

property interests is not controlling. To hold otherwise would not only exalt form over substance, but would make the scope of the Commission's authority dependent upon the vagaries of State law, something this Court has repeatedly refused to do. *E.g., Phillips Petroleum Co.* v. *Wisconsin,* 347 U.S. 672, 681.

We note further that the expert agency chosen to administer the statute has considerable room for judgment in giving concrete meaning and content to the statutory terms. In a case arising under the Bituminous Coal Act, this Court stated (*Gray* v. *Powell,* 314 U.S. 402, 413):

> Unless we can say that a set of circumstances deemed by the Commission to bring them within the concept 'producer' is so unrelated to the tasks entrusted by Congress to the Commission as in effect to deny a sensible exercise of judgment, it is the Court's duty to leave the Commission's judgment undisturbed.

Similarly in *National Labor Relations Board* v. *Hearst Publications,* 322 U.S. 111, 131, the Court held that the agency's "determination that specified persons are 'employees' under this Act is to be accepted if it has 'warrant in the record' and a reasonable basis in law." See, also, *United States* v. *Drum,* 368 U.S. 370; *National Labor Relations Board* v. *Coca Cola Bottling Co.,* 350 U.S. 264. Certainly, no less deference is due a determination by the Power Commission that a transaction is to be regarded as a sale of gas for purposes of the Natural Gas Act.

In all such situations one may postulate "innumerable variations that bring the arrangements closer to one pole or the other of the range between exemption and inclusion" (*Gray* v. *Powell, supra,* at 413). Here,

however, the elements which mark this as essentially a sale of gas, at least from the standpoint of the objectives of the regulatory statute, are so pronounced that there can be no serious question, we submit, that the Commission was well within the bounds of its authority.

A group of independent producing companies sold to Texas Eastern, an interstate pipeline company, part of their working or leasehold interests in certain substantially developed gas properties. In practical terms, they transferred their right to take all of the gas suitable for pipeline purposes from a proven, substantial, and well defined body of gas reserves—a body of reserves from which the gas was ready to flow upon the turn of a valve and from which it has in fact been flowing in interstate commerce from the date of the acquisition (R. 554). However the transaction may be viewed under the law of conveyancing, the interest of Texas Eastern was in making a direct acquisition of a huge block of deliverable gas for use in its lines. The fact that it bought this deliverable gas in the ground or "in place", rather than at the wellhead (as it had earlier contracted to do), is of little significance either from the standpoint of the operation of the pipeline or the protection of the consumer.[12]

[12] As respondents point out (*e.g.*, Br. in Opp. p. 16; R. 1023, 1039), Louisiana mineral law does not recognize the ownership of gas in place. But many other producing States, including Texas and Kansas, do recognize ownership and hence sale of gas in place. See, *e.g.*, *Helvering* v. *Elbe Oil Land Co.*, 303 U.S. 372, 375; *Burnet* v. *Harmel*, 287 U.S. 103, 109; 1 Williams and Meyers, *Oil and Gas Law* (1964 ed.), pp. 26–47. In any event, jurisdiction under the Natural Gas Act does not depend on the vagaries of State law. *E.g.*, *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 681.

We emphasize that this is not a case in which a speculator or wildcatter bought an interest in property for the purpose of engaging in exploration.[13] The supply was proven and the gas was ready to flow. Moreover, since the purchaser was an interstate pipeline, it is clear that its primary interest was in obtaining gas, rather than other minerals. And it is undisputed that all of the gas is destined for States other than Louisiana.

Without more, we submit, this was enough to establish that the Commission's judgment was permissible, if not required. It may be suggested that there are material differences between the transaction in this case and the conventional gas sale, *i.e.*, a sale at the wellhead on a unit or Mcf basis. However, a more detailed analysis of the two types of transactions, far from dictating a result contrary to that reached by the Commission, adds further support for its conclusion. For the similarities outweigh the differences.

In the case of a conventional sale, the pipeline agrees to take specified volumes for a prescribed period of time (usually twenty years or more) at a stated price per unit, while the producer, by "dedicat-

[13] The Commission has had no occasion to decide whether it would have jurisdiction over a sale of leases where anticipated reserves have not been proven or developed. Here, also, we put that question to one side.

ing" a defined body of reserves to the particular sale, surrenders his right to dispose of those reserves elsewhere."[14] In the type of transaction involved here, the producer, instead of "dedicating" his reserves, transfers his interest in them to the pipeline company in return for an immediate lump sum payment plus a promise to make additional payments annually, and the pipeline is then free to draw upon those reserves so long as it continues to meet its periodic obligations. In both cases, the pipeline commits itself to pay a specified sum of money over a given period of time in return for a right to take gas from a defined block of reserves, while the producer gives up the right to sell those reserves to any other buyer.

The ready interchangeability of the two forms of arrangement is dramatically illustrated by the circumstances of this case. As we have shown (*supra*, pp. 5–6), the lease sale agreements were substituted for the prior wellhead sales only after the Third Circuit had set aside the Commission's order granting unconditional certificates for the somewhat lower priced, but otherwise comparable, sales involved in *Catco*. The new arrangement contemplated the construction of the same facilities and the receipt by Texas Eastern of the same volumes of gas, presumably at ap-

[14] Dedication of reserves occurs as soon as deliveries commence (*e.g.*, *Atlantic Refining Co.* v. *New York Public Service Commission*, 360 U.S. 378, 387–389). Once service has commenced, a producer can terminate deliveries from the specified reserves only after having received Commission approval, normally pursuant to Section 7(b), regardless of the term of its contract. *Sunray Mid-Continent Oil Company* v. *Federal Power Commission*, 364 U.S. 137.

proximately the same price, as envisioned by the earlier sale.

The typical differences between the two forms of transaction are not important enough to justify a difference in regulatory treatment; and in any event they are minimized in the present case by special contract provisions.

In the standard wellhead sale, to be sure, the pipeline buys nothing but natural gas, whereas most leasehold sales involve the transfer of other mineral rights as well.[15] While we do not believe the presence of other elements should preclude regulation of the transfer insofar as it involves gas (where the gas is transferred to a pipeline company for interstate commerce), in this case the agreement expressly excludes all interests in minerals other than gas. And inasmuch as the interests conveyed are limited to the developed gas reserves, *i.e.*, gas above the base of the Nodosaria "A" Sand at a depth of 13,650 to 13,890 feet, the sellers also retain the right to explore for and produce any gas there may be at greater depths. Moreover, while Texas Eastern becomes the titular owner of the liquid hydrocarbons, or condensates, that may be separated or extracted from the gas after it is withdrawn from the ground, the terms of the agreement give the sellers the economic benefit of those liquids. For, in addition to the $134,395,700 consid-

[15] However, it is by no means unusual for one who is admittedly a purchaser of gas at the wellhead to obtain the right to extract liquefiable hydrocarbons. See, *e.g.*, *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission*, 290 F. 2d 552 (C.A. 10).

eration, Texas Eastern must make periodic "production payments" which are equivalent, in effect, to the net proceeds from the sale of the liquids stripped from the gas (R. 188–193, 583–587).[16]

A second difference between a conventional sale at the wellhead and a sale of reserves "in place" is that the sale "in place" may shift to the pipeline purchaser the responsibility of bringing the gas out of the ground, whereas in the conventional arrangement this work is ordinarily performed by the seller. The difference, we think, is unimportant. The principal economic function of an independent producer is to seek out and to develop new reserves; once that is done the operation of going wells is relatively minor and routine activity, in terms of both cost and effort. Even in the standard purchase arrangement, this final step in production is sometimes assigned to the pipeline purchaser. See, *e.g.*, *Continental Oil Co.* v. *Federal Power Commission*, 266 F. 2d 208 (C.A. 5), certiorari denied, 361 U.S. 827. The point does not arise in the present case, however, because any difference has been all but

[16] It was contemplated that the condensate liquids—*i.e.*, liquid hydrocarbons at the surface which existed in gaseous state in the original condition or reservoir pressure and temperature—would be removed from the gas stream both by mechanical separation in the field and at an extraction plant (R. 185, 188–193).

The production payments are to cease at the time of payment of the last scheduled note, *i.e.*, 1975 (R. 587) and Texas Eastern anticipates obtaining liquid revenues thereafter. It should be pointed out, however, that a lease conveyance could readily be written to reserve to the seller a production payment for the life of the field.

obliterated by the provisions in the contract which assign to one of the producers, Continental, the task of drilling, developing and managing the wells. The costs of operation, including Continental's management fee for performing that work, are to be borne by the producer-sellers much as if they retained the function. For while Texas Eastern, the pipeline, is obligated to reimburse Continental in the first instance (R. 835), Texas Eastern recovers the outlay from the proceeds from the condensates before remitting the balance to the producers as a production payment (R. 188–190, 973).

A third difference between a conventional sale of gas at the wellhead and a transfer of reserves in place may sometimes be found in the allocation of the risk of premature exhaustion of the reserves and the benefit of unexpected abundance. In the absence of any contrary stipulation, the risk falls upon the lessee so that the sale of a leasehold interest would shift the uncertainty to the pipeline purchaser: The latter agrees to pay a fixed price for the entire body of reserves, loses if they are less than predicted and gains if they are more; its outlay per unit of production would therefore depend upon whether the reserves exceeded or fell short of expectations. We submit that this is, at most, a factor to be weighed by the Commission in the particular case. The degree of risk and therefore its relative importance in any given transaction will vary from case to case. When the transferred leases are substantially developed, the risks, though present to some degree, may have negligible importance in relation to other character-

istics of the transaction. It is relatively simple, moreover, to negate any real shifting of the risks by including any one of various contractual stipulations in the agreement for the leasehold sale. In two recent cases, for example, the parties to leasehold sales made provision for later readjustment of the purchase price on the basis of a mid-life redetermination of the reserves. *Tennessee Gas Transmission Co.*, 30 FPC 1477, set aside in part *sub nom. Pan American Petroleum Corp* v. *Federal Power Commission*, 339 F. 2d 694 (C.A. 10), (sales contract provides for one redetermination of reserves upon request of either party between 1969 and 1973); *Continental Oil Co. et al.*, FPC Docket No. R164-129, Order issued October 23, 1964, and the examiner's decision issued August 19, 1964[17] (redetermination of recoverable reserves to redetermine total price at request of any party in seventh year after signing of agreements).[18] There is,

[17] In that case, the examiner, after finding that the in-place sale should be treated as jurisdictional, concluded nevertheless that he was bound by the Fifth Circuit decision in the present case to hold the transaction non-jurisdictional. The Commission adopted the examiner's decision, except the conclusion that the decision below was controlling in this case.

Petitions to review the Commission's order have been filed in four circuits. *Atlantic Refining Co.* v. *Federal Power Commission*, C.A.D.C. No. 19137; *Continental Oil Co.* v. *Federal Power Commission*, C.A. 5 No. 22163; *Cities Service Oil Co.* v. *Federal Power Commission*, C.A. 10 No. 8024; *Tidewater Oil Co.* v. *Federal Power Commission*, C.A. 9 No. 19835. All of these cases are being held in abeyance pending the decision here.

[18] In this case, relating to the sale of reserves in the Ship Shoal Field, the examiner pointed out that a witness for one of the sellers had "stated that there was a wide variation in the reserve estimates among the parties, that the actual amount of recoverable gas was not and could not have been ascertained, and that the reserve figure was merely an arbitrary one de-

of course, no reason why the contract could not substantially eliminate the uncertainty by providing for several periodic redeterminations of reserves and consequent price adjustments.

In the present case, Texas Eastern apparently accepted a measure of the risk that it had overestimated the reserves—a risk which inheres in the fact that, under the contract, payments "lead" production.[19] But the risk is more apparent than real. Texas Eastern organized an intermediary (Louisiana Gas Corporation) which actually entered into the lease-sale agreement and alone is obligated on the notes to the producer-sellers (*supra*, p. 12). Should the reserves show signs of exhaustion before the end of the payout period, this "shell" corporation could default on the notes and surrender the leases to the producers. Thus, the principal risk—failure or destruction of the reserves at a relatively early date—remains with the producer-sellers.

The fact that the reserves were not measurable with precision at the time of contract,[20] and that the pipeline assumed some of the attendant risk—while it might, as the Commission indicated (R. 976–977), cast doubt upon whether the entire transaction would serve the public convenience and necesssity—does not

signed to serve only as a base for computing the purchase price adjustment in the event of redetermination of the price" (mimeo. op., p. 3).

[19] If production is increased over the anticipated rate, payment on the notes becomes accelerated (R. 351; *supra*, p. 12).

[20] The lease sale and conveyance expressly excluded from the transfer an interest in gas below a stated depth, *i.e.*, below the area of any development. It thus limited the transfer to reserves which were to some extent measurable and excluded those which could be estimated only by pure guesswork.

remove it from the Commission's jurisdiction. Indeed, the difficulty of determining in advance the exact price per Mcf paid by the pipeline makes it all the more important that the Commission have power to scrutinize the sale and to impose such conditions as may be necessary to minimize the risk to the ultimate consumer (R. 982–983). For jurisdictional purposes, however, the dominant consideration is that what the pipeline paid for was the producers' interest in a defined block of deliverable gas. Both in the economic sense and in terms of the regulatory objective—the protection of the ultimate consumers—there has been a sale of natural gas, even if there has also been a transfer of an interest in real property.

II. A SALE OF LEASEHOLD INTERESTS IN PROVEN RESERVES DOES NOT COME WITHIN THE "PRODUCTION OR GATHERING" EXEMPTION

A. If, as argued above, the transaction involved here was a sale in interstate commerce of gas for resale, it follows, under the authorities, that it is not within the exemption provided by Section 1(b) for "production or gathering." As the Tenth Circuit pointed out in *Saturn Oil & Gas Co.* v. *Federal Power Commission*, 250 F. 2d 61, 68, certiorari denied, 355 U.S. 956, the *Phillips* decision necessarily established "that the production or gathering exemption of Section 1(b) did not apply to exclude from the jurisdiction of the Commission sales by any producer of natural gas for transportation interstate for resale to the public."

The decision below rests, in part at least, upon the erroneous premise that a sale of natural gas cannot be jurisdictional if it takes place before the production and gathering processes have run their course. The court below emphasized that in *Phillips* the Court was "able to find jurisdiction because [quoting this Court's opinion] 'production and gathering, in the sense that those terms are used in Section 1(b), end before the sales by Phillips occur'" (R. 1287). There is no indication in *Phillips*, however, that this circumstance—the prior termination of production and gathering—was essential to this Court's finding of jurisdiction. On the contrary, *Phillips* seems to rest squarely on the view that all sales in interstate commerce for resale are subject to Commission jurisdiction and that it is the "production or gathering" exemption that must yield if necessary to give effect to this affirmative grant of jurisdiction.[21] Thus, re-

[21] Thus, Mr. Justice Douglas stated, in dissenting in *Phillips* (347 U.S. at 688): "There is much to be said from the national point of view for regulating sales at both ends of these interstate pipelines. The power of Congress to do so is unquestioned. Whether it did so by the Natural Gas Act of 1938 is a political and legal controversy that has raged in the Commission and in the Congress for some years. The question is not free from doubts. For while § 1(b) of the Act makes the regulatory provisions applicable 'to the sale in interstate commerce of natural gas for resale for ultimate public consumption,' it also makes them inapplicable 'to the production or gathering of natural gas.'

"The sale by this independent producer is a 'sale in interstate commerce * * * for resale.' It is also an integral part of 'the production or gathering of natural gas,' * * * for it is the end phase of the producing and gathering process. So we must make a choice; and the choice is not an easy one."

jecting (347 U.S. at 680–681) a contention that its earlier decision in *Interstate Natural Gas Co.* v. *Federal Power Commission*, 331 U.S. 682, had rested on narrow distinctions, the Court observed that *Interstate* was based "on the broader ground that sales in interstate commerce for resale by producers to interstate pipeline companies do not come within the 'production or gathering' exemption."[22] Moreover, in terms of what *Phillips* defined as the "primary aim of the Natural Gas Act"—*i.e.*, "[p]rotection of consumers against exploitation at the hands of the natural-gas companies" (347 U.S. at 685)—it is obviously immaterial whether the sale of gas takes place before or after completion of production and gathering. That distinction is equally irrelevant to the "overriding congressional purpose" of plugging "the 'gap' in regulation" over such sales by the States (347 U.S. 682–683).

The Fifth Circuit's restrictive reading of *Phillips* was also impliedly rejected by this Court when it invalidated the Kansas minimum price regulations in *Cities Service Gas Co.* v. *State Corporation Commis-*

[22] In the *Interstate* case, the Court had similarly observed (331 U.S. at 692–693): "* * * All the gas sold in these transactions is destined for consumption in States other than Louisiana. Unreasonable charges exacted at this stage of the interstate movement become perpetuated in large part in fixed items of costs which must be covered by rates charged subsequent purchasers of the gas, including the ultimate consumer. It was to avoid such situations that the Natural Gas Act was passed. [Quoted in *Phillips*, *supra*, 347 U.S. at 680.]" These objectives could not be achieved by limiting federal regulatory jurisdiction to those instances where production and gathering had been concluded.

sion of Kansas, 355 U.S. 391. That decision, citing *Phillips* and *Natural Gas Pipeline Co.* v. *Panoma Corp.*, 349 U.S. 44, reversed, *per curiam*, a decision of the Kansas Supreme Court (180 Kan. 454, 304 P. 2d 528) upholding (as a valid conservation measure) an administrative order requiring payment of a minimum price before cessation of production. The Kansas Court sought to distinguish *Phillips*, as well as *Panoma* (in which a similar Oklahoma minimum price regulation was struck down), on the ground that in both of those cases the production and gathering process had ended prior to the sale to which federal jurisdiction attached. This Court's reversal necessarily involved a rejection of that view.

Moreover, until the decision below, no court of appeals had interpreted *Phillips* so narrowly. On the contrary, both the Tenth Circuit in *Saturn* and the Fifth Circuit itself in *Deep South Oil Co.* v. *Federal Power Commission*, 247 F. 2d 882, 888–889,[23] have upheld the Commission's jurisdiction over producer sales at the wellhead, even though consummated before the gas had been gathered. In *Saturn*, the court, after pointing out that the case before it was factually different from *Phillips* because the sale in-

[23] In two companion cases in which the opinion in *Deep South* was followed certiorari was denied. *Shell Oil Co.* v. *Federal Power Commission*, 247 F. 2d 900 (C.A. 5), certiorari denied, 355 U.S. 930, and *Humble Oil & Refining Co.* v. *Federal Power Commission*, 247 F. 2d 903 (C.A. 5), certiorari denied, 355 U.S. 930. These orders denying certiorari were issued one week after the *per curiam* order in *Cities Service*, *supra*, p. 30.

volved was made prior to gathering, nevertheless rejected petitioner's "contention that the Act was never intended to apply to wellhead sales because such sales are made during production and gathering and are only technically consummated in interstate commerce." It concluded that in "the final analysis the question resolves itself into a determination of whether the *Phillips* decision is to be viewed in light of its precise facts or in the light of the broad language of the court," and that this Court had carefully refrained from basing *Phillips* on narrow grounds. 250 F. 2d at 64, 67–68. In *Deep South, supra,* the Fifth Circuit similarly held that the Commission had jurisdiction over wellhead sales for resale consummated before the gas had been gathered, noting that the affirmative grant of jurisdiction in Section 1(b) was not limited by the production and gathering exemption. 247 F. 2d at 888–889.[24]

[24] In *Continental Oil Co.* v. *Federal Power Commission*, 266 F. 2d 208 (C.A. 5), certiorari denied, 361 U.S. 827, a related issued was decided. There a sale was made at the top of two valves in the "Christmas Tree" at the wellhead, prior to the completion of gathering. While the jurisdictional character of the sale was not at issue, Continental contended that none of its facilities was jurisdictional. The Commission claimed alternatively that facilities used by the producer to make the sale were not production facilities or else that production facilities which are essential to effect a sale are not exempt facilities. Judge Tuttle, speaking for the majority, stated that under *Phillips* and *Deep South* a strong argument could be made for concluding that production facilities which are also essential to effect a jurisdictional sale would be subject to Commission jurisdiction, notwithstanding the production and gathering exemption. But the court did not decide on that basis, holding instead that the record supported the Commission's conclusion that there were facilities used for the sale of the gas that were not facilities for production.

The short of it is that the concepts of a "sale for resale" and of "production or gathering" do not mark out mutually exclusive territories: a sale may occur before production or gathering is completed. The two statutory concepts can be reconciled by adopting the entirely plausible interpretation that the exemption relates to the facilities and processes involved in production or gathering, but not to sales of the kind affirmatively subjected to Commission jurisdiction, whatever the stage at which those sales occur. That this is the correct resolution is the plain teaching of *Phillips* and the successor cases to which we have referred. It is a resolution, moreover, which in no way interferes with the power of the States to regulate the physical processes of production in the interest of conservation or for other legitimate purposes.

B. The Fifth Circuit's reliance upon *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, is misplaced. Panhandle, an interstate pipeline, sold *undeveloped* leases in the Kansas-Hugoton field to a subsidiary, Hugoton Production Company;[25] the subsidiary in turn developed the leases and sold the gas for industrial use within the State of Kansas (337 U.S. at 500–501). The Commission argued (a) that the power to prevent this disposition was a necessary incident of its general certificate and rate authority over interstate pipelines, and (b) that the leases were jurisdictional facilities which could not

[25] The Hugoton stock was then spun off to Panhandle's stockholders.

be disposed of or abandoned without Commission authorization pursuant to Section 7(b) of the Act. It pointed to the fact that the leases and reserves, though unconnected to the pipeline system, had been relied upon by Panhandle to support its application for certificates to build additional pipeline facilities, and had been included in its rate base as "used and useful property." This Court rejected those contentions, stressing that the leases "are an essential part of production" (337 U.S. at 505), and that "the transfer of undeveloped gas leases is an activity related to the production and gathering of natural gas and beyond the coverage of the Act" (337 U.S. at 515). The Court noted that the rate and certificate provisions invoked by the Commission were in terms limited to matters (*i.e.*, facilities and transportation or sale) "subject to the jurisdiction of the Commission". (Sections 4 (a), (b), (c), 5(a), 7 (b) and (c)), and it refused to read the grant of jurisdiction over "natural-gas companies" in Section 1(b) so broadly as to "swallow all the exceptions of the same section."

It is evident that the issue in *Panhandle* was quite different from the one presented here. There the question was whether, without Commission approval, an interstate pipeline could make any disposition whatever of leases which had been included in its rate base and relied on to support its applications for certificates of public convenience and necessity. Since the gas from Panhandle's transferred leases was to be consumed in the producing State, the Commission was unable to claim that the transfer was a sale "in interstate commerce." Accordingly, this Court had no occasion to consider the question now

at issue—whether a transfer of proven reserves may be a jurisdictional sale of "natural gas." Nor was it required to examine the relationship between the "production or gathering" exemption and the equally specific affirmative grant of power over sales of natural gas in interstate commerce. The fact that the Court was unwilling to subordinate the exemption to the rather nebulous grant of authority over "natural-gas companies" does not mean that it would have given the exemption similar precedence over the very specific jurisdictional grant which we invoke here.[26]

The *Panhandle* case, moreover, antedated the *Phillips* decision by some five years, and was decided at a time when the Commission had not asserted jurisdiction even over conventional sales of gas by independent producers at the wellhead. The assumption that the Commission lacked control over such sales may well have influenced this Court's thinking in *Panhandle*. For the Court was at pains to explain that in sanctioning the inclusion of production and gathering facilities in a pipeline's rate base, its earlier decision

[26] Respondents (Br. in Opp., p. 14) seek comfort in the fact that the Commission, in its annual reports to Congress from 1951 through 1962, requested authority to regulate leasehold transfers. In so doing, they overlook the fact that the present issue is not encompassed by the requested legislation, which specifically asks that Section 7(b) of the Gas Act be amended to require Commission approval for the transfer by an interstate natural gas pipeline company of natural gas reserves where such reserves have constituted part of the basis for issuance of certificates of public convenience and necessity. See, *e.g.*, 34 FPC Annual Report 170 (1954). Plainly, the requested legislation has been directed only at seeking a reversal of the outcome in *Panhandle* and is not germane to the different question presented here.

in *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U.S. 581, had not established a "precedent for regulation of any part of production or *marketing*" (337 U.S. at 506; emphasis added). Evidently the Court regarded control over the sale of leases as inconsistent with its view that the Commission lacked direct authority over "production or marketing."[27] In *Phillips*, of course, the Court sanctioned an even more direct control over "production and marketing" by holding that the Commission, contrary to the assumption in *Panhandle*, had jurisdiction over an independent producer's interstate sale for resale.[28]

III. THE HOLDING BELOW WOULD UNDERMINE THE REGULATORY SCHEME BY CREATING A CLASS OF INDEPENDENT PRODUCER SALES FREE FROM EFFECTIVE REGULATION, EITHER STATE OR FEDERAL

If allowed to stand, the decision below would provide a simple mechanism for avoiding effective regulation, State or federal. As we have indicated (*supra*, pp. 5–6), the present arrangement was substituted for a conventional gas purchase agreement after the Third Circuit's decision in *Catco* made it apparent that producers' initial prices would henceforth be

[27] In defining the scope of "production or gathering" as precluding jurisdiction over "the transfer of undeveloped leases," the Court relied on the legislative history of H.R. 11662, 74th Cong., 2d Sess., and particularly the testimony of Mr. Dozier De Vane, then Solicitor of the Commission (337 U.S. at 505, n. 7), which the Court in *Phillips* expressly concluded had little relevance because it did not relate to the bill that finally was enacted into law. 347 U.S. at 682, n. 9.

[28] We also note the establishment of the principle that, once service has commenced from reserves underlying a sales contract, the producer cannot terminate that service without Com-

subject to careful scrutiny. This sale, involving reserves estimated at nearly a billion Mcf, is by no means an isolated example of attempts to use the device of an in-place sale to avoid effective Commission regulation of the price at which gas is purchased for the interstate market. Pan American Petroleum Company, for example, claims non-jurisdictional status for a similar arrangement with Tennessee Gas Transmission Company involving the sale of estimated reserves of about 750 million Mcf from the Bastian Bay field in Louisiana. See *Tennessee Gas Transmission Co.*, 30 FPC 1477, set aside in part *sub nom. Pan American Petroleum Corp.* v. *Federal Power Commission*, 339 F. 2d 694 (C.A. 10). Similarly the Catco companies sold gas reserves, estimated at more than 500 million Mcf, in the Ship Shoal field, offshore Louisiana, to Tennessee Gas Transmission Company under a lease sale agreement. See *supra*, p. 26.[29] And, as is apparent from our discussion of the sale involved in the case at bar (*supra*, pp. 20–28), the lease sale device could, without any real change in operation or in producer-pipeline relationships, become the dominant means of selling gas to natural gas pipelines.

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mission approval. *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378, 389 (*Catco*), and *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission*, 364 U.S. 137, 156. It follows that once a producer has commenced service from any of the leases dedicated to a contract, even though some may not be developed, he can alienate those leaseholds only with Commission approval.

[29] The parties to another proposed lease sale agreement substituted a conventional sales agreement after the examiner had found that the lease sale was jurisdictional and had refused to issue a certificate for related facilities. See *Tennessee Gas Transmission Co.*, 29 FPC 4.

If such sales were not subject to direct Commission regulation, an "attractive" and, we apprehend, a rapidly widening "gap" in the regulatory system would be created; for here, as in *Lo-Vaca*, the producing State could not reasonably be expected to close a gap that woud permit "higher pipeline costs which ultimately would be reflected in rates paid by consumers in other States." *Lo-Vaca*, slip op. pp. 4–5; see, also, *Federal Power Commission* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1.

To be sure, the Commission would have power to examine these transactions in a proceeding to determine just and reasonable rates for the pipeline purchaser, and at that time—at least in theory—could disallow such portion of the leasehold acquisition costs as it found to be improvident. See, *e.g.*, *Southwestern Bell Telephone Co.* v. *Public Service Commission of Missouri*, 262 U.S. 276, 289; *West Ohio Gas Co.* v. *Public Utilities Commission of Ohio*, 294 U.S. 63, 72. One may well question the practicalities of that remedy. How readily could the Commission establish, for example, that a pipeline purchaser had been improvident in the face of a claim by the pipeline that it had overestimated the reserves in an acquired tract? Could the Commission expect a pipeline, in purchasing a large block of reserves, to make the kind of investigation of producing costs and market conditions that the agency, with all of its investigatory powers, might undertake? And in this area, where the problems of price determination are of unrivaled complexity and the factors of judgment numerous, could any price, other than one well beyond the upper reaches of a broad zone of reasonableness, be

proved an improvident expense? The answers are more than doubtful. Indeed, it seems evident that if price regulation is to be effective, the burden of justifying the price must be placed upon the pipeline and its suppliers before the transaction is consummated. At that point, they should be called upon to produce information which will permit a reasonably accurate determination of the unit price and of its justness and reasonableness. See *Atlantic Refining Co.* v. *Public Service Commission of New York*, 360 U.S. 378, 392. A proceeding to establish that a course of business long pursued was initially improvident is a far more difficult undertaking and, by the same token, furnishes far less protection to the consumer.

In addition, we point out that while the risk that an acquisition will be found improvident falls in the first instance upon the pipeline's investors, the resulting impairment of the company's capital might well increase the cost of attracting investment in the future and the additional cost would have to be borne by the ratepayer. As the Commission concluded in its opinion (R. 976):

> * * * Control limited to approving the costs of the gas to the purchasing pipeline is, of course, not an effective way to regulate producer prices because in the large a pipeline must be allowed to pass on its purchased gas costs to the ultimate consumer or it cannot continue to discharge its public service responsibilities.[30]

[30] This inadequacy in the protection afforded consumers by the Commission's power to disallow, in a rate case, improvidently incurred expenses was one of the reasons for amending the Gas Act in 1942 to require certificate authorization prior to

Thus, the opportunity to disallow the improvident portion of outlays in determining a purchaser's rates is scarcely a substitute for the ability to pass directly upon a seller's rates. If it were, there would be no need for the Commission to regulate producer rates at all, for it could protect consumers simply by making appropriate adjustments in the pipeline's cost of service.

Nor is there any assurance that the Commission could effectively regulate these sales through the exercise of its power to certificate the construction of facilities necessary to transport the gas from the leaseholds. For, in many cases, the transfer might well be consummated, and the parties legally obligated, long before the pipeline seeks authority to build the needed facilities for transporting the gas.[31]

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undertaking any new construction and acquisition of jurisdictional facilities or initiation of new service. 56 Stat. 83, 84. Prior to that time the Gas Act, as enacted in 1938, required certificate authorization only if a natural gas company proposed to provide service to an area already being served by another natural gas company. 52 Stat. 825.

This Court, in *Federal Power Commission* v. *Texaco Inc.*, 377 U.S. 33, recognized this in observing that protection of the consumer interests may frequently "be best achieved if it is done at the very threshold of the enterprise" (*id.* at 42), a fact also recognized by Congress in the legislative history of the 1942 amendments quoted in *Texaco* (*id.* at 43–44).

[31] In the present case, to be sure, the contract was contingent upon issuance by the Commission of a certificate for Texas Eastern's proposed facilities. However, the parties apparently considered the original certificate, which was subsequently set aside, as fulfilling that contract condition. In contrast, in the Bastian Bay and Ship Shoal transactions, *supra*, there was no provision making the conveyance dependent upon receipt of a certificate by the purchasing pipeline.

At that point—as in a rate case—the Commission would have the choice of saddling the consumer with unwarranted gas costs or of disallowing a portion of those costs at the risk of impairing the pipeline's financial status.

Moreover, even if the transaction were presented to the Commission at an executory stage, the interests of consumers would still not be adequately protected. It is questionable whether the Commission, in granting certificate authority to construct facilities, could insert a condition requiring periodic adjustment of the sale price in accordance with future determinations under Section 5 standards of justness and reasonableness, as it could if the transaction were deemed a continuing sale of "natural gas" in interstate commerce. For if the Commission were unable to consider directly the seller's costs and financial requirements in determining the prudence of an acquisition, "the existence of power to achieve the same end indirectly through the conditioning power might well be doubted * * *." *Sunray Mid-Continent Oil Co.* v. *Federal Power Commission,* 364 U.S. 137, 152.

CONCLUSION

For these reasons, the judgment of the court of appeals should be reversed and the orders of the Commission reinstated.[32]

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

RALPH S. SPRITZER,
FRANK GOODMAN,
Assistants to the Solicitor General.

RICHARD A. SOLOMON,
General Counsel,

HOWARD E. WAHRENBROCK,
Solicitor,

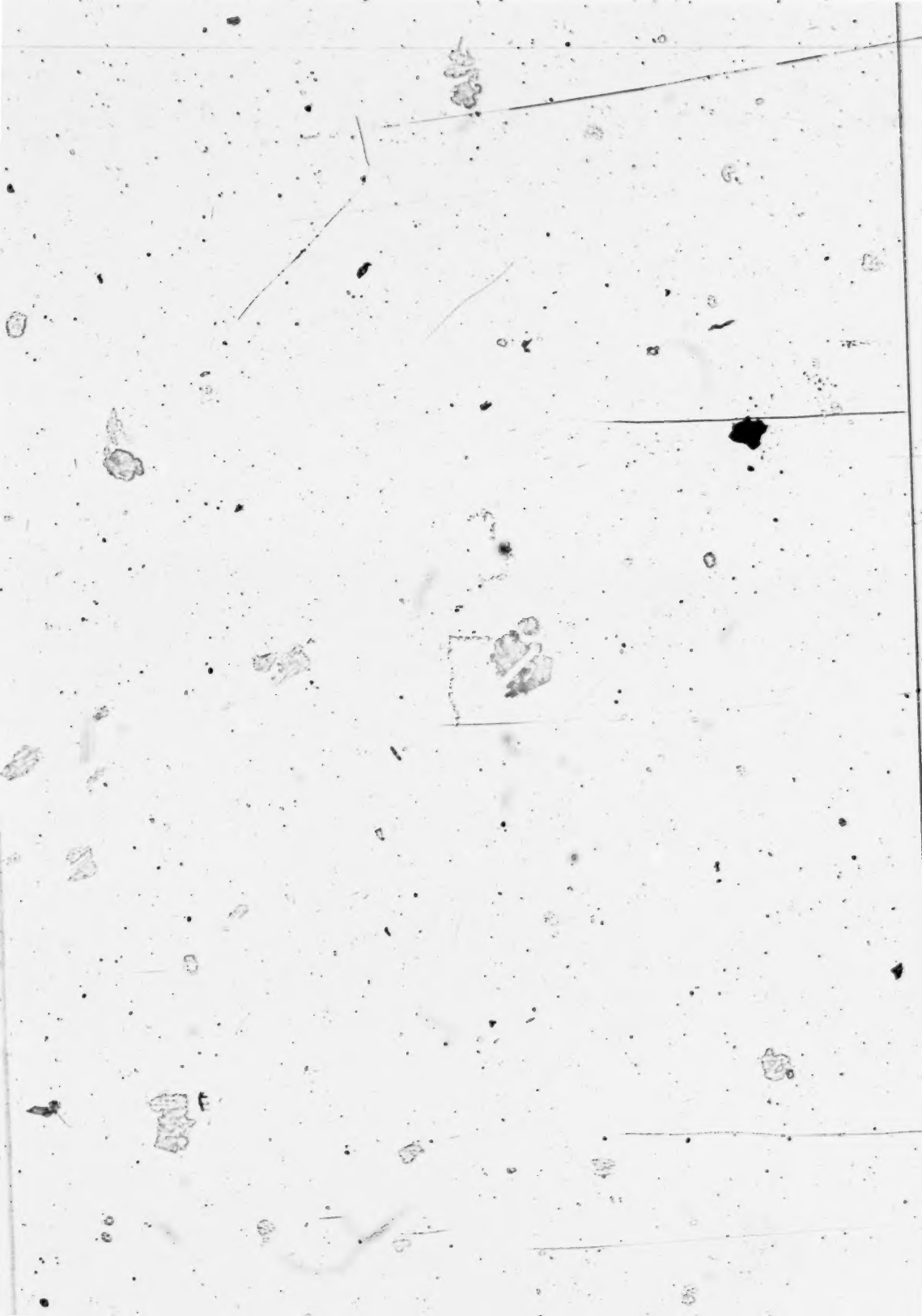
ROBERT L. RUSSELL,
Assistant General Counsel,

PETER H. SCHIFF,
Attorney,
Federal Power Commission.

MARCH 1965.

[32] If we are correct in our view that the transfer to Texas Eastern was a sale of gas subject to the Commission's jurisdiction, it is evident that the Commission properly refrained from issuing a certificate to Texas Eastern and that its orders should be affirmed. We note additionally that the Commission has preserved to Texas Eastern and the producers full opportunity to make the showing which it believes required in order to justify certification under Section 7 (R. 1229–1230).

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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 693

FEDERAL POWER COMMISSION,
Petitioner,

vs.

M. H. MARR, SUN OIL COMPANY, CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Motion of the People of the State of California and the Public Utilities Commission of the State of California for Leave to File Brief Amici Curiae in Support of Petitioner, and Brief Amici Curiae

RICHARD E. TUTTLE
Chief Counsel

J. CALVIN SIMPSON
Senior Counsel

WILLIAM N. FOLEY
Assistant Counsel
5072 State Building
San Francisco 2, California

Attorneys for the People of the State of California and the Public Utilities Commission of the State of California

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SORG PRINTING COMPANY OF CALIFORNIA, 180 FIRST STREET, SAN FRANCISCO 5

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In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 693

FEDERAL POWER COMMISSION,
Petitioner,

vs.

M. H. MARR, SUN OIL COMPANY, CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Motion of the People of the State of California and the Public Utilities Commission of the State of California for Leave to File Brief Amici Curiae in Support of Petitioner.

The People of the State of California and the Public Utilities Commission of the State of California (California), through their Attorney and Chief Counsel, pursuant to Rule 42 of the Revised Rules of the Supreme Court of the United States, respectfully move for leave to file, in the above-entitled case, their brief amici curiae, annexed hereto, which supports the position of the Federal Power Commission (Commission), petitioner herein. Pursuant to Rule 42, the consent to file brief amici curiae was requested of the parties. Petitioner has consented; all Respondents refused such consent.

The Attorney and Chief Counsel for the Public Utilities Commission of the State of California is charged with the duty and responsibility of representing and appearing for the People of the State of California and the Public Utilities Commission of said State in all matters concerned with public utility regulation (Section 307, California Public Utilities Code).

California's interest in this proceeding stems from its unique dependence upon natural gas as a fuel. Natural gas has changed from a waste byproduct of the oil industry to a unique fuel, now the sixth largest industry in the nation. Since California does not possess coal deposits sufficient for its energy requirements, it is compelled to rely upon natural gas. Almost seventy-five percent of the total gas consumed in California in 1963 was delivered from out of state. Ninety percent of all homes in California are heated by natural gas, and California industry depends upon natural gas as a fuel. In 1963 distributing utilities in California purchased almost one trillion cubic feet of natural gas from out-of-state pipeline companies subject to regulation by the Commission. The cost of this gas delivered at the State border was approximately $327,000,000, all of which was eventually borne by California consumers. California consumers have no realistic alternative for fuel.

Of vital concern to California is the issue in this case relating to the jurisdiction of the Commission over the sale by an independent producer to an interstate pipeline company of a leasehold interest in proven and developed natural gas reserves for use in supplying its interstate markets. As the largest natural gas consuming state in the nation, California's interest in an adequate supply of natural gas at just and reasonable prices will be permanently frustrated if regulation under the Natural Gas Act can be avoided by the lease sale-management agreement device utilized here. If this device to sell gas in interstate commerce is valid, the Natural Gas Act will be effectively repealed, insofar as producers

are concerned. *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954) will be meaningless because the independent producers will have achieved the long sought "attractive gap" in the comprehensive system for regulating the transportation, production and sale of this unique natural resource.

Only recently California brought to this Court for review another device designed by producers to escape jurisdiction. See *California v. Lo-Vaca Gathering Co.*, 33 U.S.L. Week 4159 (U.S. Jan. 18, 1965).

In this case, petitioner primarily argues the scope of its jurisdiction under the Natural Gas Act. The brief which amici curiae are requesting permission to file contains an argument on the issue of jurisdiction over this sale as necessary to preserve the purpose of the Act by preventing the creation of an "attractive gap" of nonregulation. Secondly, an argument is presented on the issue of the applicability and relevance of *Federal Power Commission v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949), relied upon by the Court of Appeals.

California submits the annexed brief on behalf of California consumers and urges that this Court recognize and approve the exercise of jurisdiction by the Commission over lease-sale transactions designed to avoid regulation.

Respectfully submitted,

RICHARD E. TUTTLE
Chief Counsel

J. CALVIN SIMPSON
Senior Counsel

WILLIAM N. FOLEY
Assistant Counsel

Attorneys for the People of the State of California and the Public Utilities Commission of the State of California

Dated: March 9, 1965.

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 693

FEDERAL POWER COMMISSION,
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Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

Brief Amici Curiae on Behalf of the People of the State of California and the Public Utilities Commission of the State of California

INTRODUCTORY STATEMENT

California adopts such portions of the brief of the Federal Power Commission, petitioner herein, setting forth the Opinions Below, the Jurisdiction, the Question Presented, the Statute Involved, and the Statement.

The interest of California in this cause is fully set forth in the motion preceding this brief.

SUMMARY OF ARGUMENT

The lease sale-management agreement is a direct sale of natural gas in interstate commerce in disguise, and is designed for no other purpose than to escape regulation.

The view that leases are an essential part of production is a broad, misleading concept, when compared to more perceptive decisions by this Court, and is incompatible with the necessity to regulate sales of natural gas in interstate commerce to protect the public interest.

In other fields of federal regulation this Court has refused to accept agreements or statutory interpretations which avoid jurisdiction. The Court will look to the substance of the parties' acts and not merely to the form they use.

ARGUMENT

The Purpose of the Lease Sale-Management Agreement Is the Creation of an Attractive Gap of Nonregulation, Contrary to and Restrictive of the Federal Regulatory Scheme Established Under the Natural Gas Act.

I. The Lease Sale-Management Agreement Is a Direct Sale of Natural Gas in Disguise.

In this case the Court is faced with another attempt by independent producers to escape the regulatory jurisdiction of the Federal Power Commission (Commission) under the Natural Gas Act.

The facts surrounding this transaction lead only to one conclusion—a direct sale of gas disguised as a conveyance of a developed gas leasehold. First, the producers and Texas Eastern Transmission Corporation (Texas Eastern) executed a direct sale of gas from the Rayne field at the extremely high price of 23.9 cents per Mcf. Second, this agreement was cancelled and certificate applications were withdrawn, because the "Catco" decision[1] set aside a similar sale at the lower price of 22.4 cents per

1. *Atlantic Refining Co. v. Public Service Commission*, 360 U.S. 378 (1959).

Mcf. Third, the producers and Texas Eastern agreed to a lease sale-management agreement where the producers sold their leasehold interest in a known quantity of gas between particular strata-levels, including the wells and other equipment, and, pursuant to the "management agreement", the producers continued to operate the gas producing properties.

While the price for the leasehold is represented as a lump sum, the Presiding Examiner concluded that the cost of the gas to Texas Eastern would be 24.34 cents per Mcf—almost a *half cent higher* than the price of the original direct sale agreement, and *5.8 cents per Mcf higher* than the "in line" price of 18.5 cents per Mcf for this field (R. 896-898).

It is now contended by the producers and Texas Eastern that this costlier sale of gas is incapable of being regulated by the Commission because it is the sale of a leasehold. Respondents argue that this sale is different from a direct sale at wellhead, which is concededly under Commission jurisdiction.

Two vital facts cry out for a holding that this alleged difference is undistinguishable from the direct sale at wellhead. First, by means of the contract-back feature the producers still produce. They bring the gas to the surface of the earth by operating the wells just as they would in a direct sale. Second, the only real difference, therefore, between the lease sale and a direct sale at wellhead is that the papers involved are entitled a "lease sale agreement" instead of a simple "sale". Everything else remains the same, except the higher cost which will be imposed on consumers of the gas. This subterfuge to avoid regulation must, therefore, be set aside.

II. The Panhandle Eastern Decision Must Yield to the More Important Purpose of Consumer Protection Under the Natural Gas Act.

The necessity for the Natural Gas Act has been defined by Congress:

> ". . . it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public

is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest."[2]

This Court has stated that the Act's primary aim is the "protection of consumers against exploitation at the hands of the natural gas companies",[3] and that its purpose is to provide a "complete, permanent and effective bond of protection from excessive rates and charges."[4]

In order to give effect to consumer protection, this Court held, in the 1954 *Phillips* case,[5] that a sale of gas by an independent gas producer (i.e., one which neither transports gas in interstate commerce nor is affiliated with an interstate pipeline company) for resale in interstate commerce is subject to the Commission's jurisdiction. This jurisdiction specifically includes *"all wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during, or after transmission by an interstate pipeline company."*[6]

The broad jurisdictional grant of the *Phillips* case has been held to encompass sales made by a producer to an extraction plant that resells the processed residue gas,[7] sales made after the gas is produced, but before it is gathered by the purchaser-pipeline;[8] sales made to an extraction plant that processes the gas and

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2. 52 Stat. 821, 15 U.S.C. § 717a (1958).

3. *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944).

4. *Atlantic Refining Co. v. Public Service Commission*, 360 U.S. 378, 388 (1959).

5. *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954).

6. *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, 682 (1954).

7. *Deep South Oil Co. v. Federal Power Commission*, 247 F.2d 882 (5th Cir. 1957). See Note, 63 Mich. L.R. 155 (1964).

8. *Saturn Oil & Gas Co. v. Federal Power Commission*, 250 F.2d 61, (10th Cir. 1957), cert. den. 355 U.S. 956.

returns it to the producer, who then sells it to an interstate pipeline company;[9] sales of gas not transmitted interstate until after being stored underground for some time at a place removed from the point of sale;[10] and gas sold in the wellhead before reaching the final regulating valve controlled by the buyer.[11]

Moreover, this Court has said during this term, in *California v. Lo-Vaca Gathering Co.*, 33 U.S.L. Week 4159 (U.S. Jan. 18, 1965), that "if suppliers of gas and a pipeline were free to allocate by contract gas from a particular source to a particular use, havoc would be raised with the federal regulatory scheme." The *Lo-Vaca* case raised the same public policy question as raised now, namely, may a pipeline company and a supplier immunize gas from the reach of federal regulation by the words used to characterize the transfer of gas? In *Lo-Vaca* the contracting parties attempted to avoid jurisdiction by designating gas as "intrastate gas". In the case at bar the respondents designate the sale of gas as a sale of a leasehold. The Court dealt with such attempts by saying:

> "Attempts have been made by one convention or another to convert a local transaction into one of interstate commerce (Sprout v. South Bend, 277 U.S. 163; Superior Oil Co. v. Mississippi, 280 U.S. 390) or to make a segment of interstate commerce appear to be only intrastate. Baltimore & Ohio R. Co. v. Settle, 260 U.S. 166. But those attempts have failed. *Similarly, we conclude that when it comes to the question, what gas is for 'resale', the present contracts should not be able to change the jurisdictional result.*" (33 U.S.L. Week 4160; emphasis added.)

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9. *Argo Oil Corp.*, 15 F.P.C. 601 (1955). See Note, 63 Mich. L.R. 155 (1964).

10. *Continental Oil Co. v. Federal Power Commission*, 247 F.2d 904 (5th Cir. 1957). See Note, 63 Mich. L.R. 155 (1964).

11. *Continental Oil Co. v. Federal Power Commission*, 266 F.2d 208 (5th Cir. 1959), cert. den., 361 U.S. 827. See Note, 63 Mich. L.R. 155 (1964).

The Court of Appeals has concluded that a sale of a leasehold in a developed reserve of gas is different, and is entitled to non-regulation on the theory that any transaction involving a leasehold qualifies under the "production or gathering" exemption contained in Section 1(b) of the Act.[12] The only authority cited for this conclusion is a broad statement in *Federal Power Commission v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949), a case pre-dating the *Phillips* decision, and not involving a developed reserve of gas or a sale in interstate commerce. In that case, the Court said: "Of course, leases are an essential part of production."[13] In reaching its decision, the Court of Appeals primarily relies upon this broad statement.

But surely this language applies at most only to sales of leases where the purchaser pays a lump sum price for the leasehold and where he takes on the responsibilities of exploratory drilling, development drilling, and control and management of the wells. If the sale of a gas lease coupled with "management agreements" contracting back normal production operations to the seller, is exempted from Commission regulatory authority, the result can only be "havoc with the regulatory scheme." The "attractive gap" in regulation will be achieved.[14] If a sale of a lease under the facts present here is held to be an effective device to avoid regulation in the public interest, then the *Panhandle Eastern* decision

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12. 52 Stat. 821, 15 U.S.C. § 717b (1958).

13. *Federal Power Commission v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 505 (1949).

14. See *Federal Power Commission v. Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1 (1961); in which the Court stated: "Congress did not desire an 'attractive gap' in its regulatory scheme; rather Congress intended to impose a comprehensive regulatory system on the transportation, production, and sale of this valuable natural resource." 365 U.S. at 28. See also *Panhandle Eastern Pipe Line Co. v. Public Service Commission of Indiana*, 332 U.S. 507, 524 (1947); and *California v. Lo-Vaca Gathering Co.*, 33 U.S.L. Week 4159, 4160 (U.S. Jan. 18, 1965).

does "go far toward scuttling the Natural Gas Act."[15] Production of gas is the bringing of the gas to the earth's surface and not the legal form used to transfer gas to pipeline companies. If *Panhandle Eastern* means that the regulated sale of gas in interstate commerce can become unregulated by merely selling the leasehold rights (i.e., the gas), California submits it is wrong and must be overruled to preserve the larger, more important consumer protection purpose of the Act.

In our view, the issue is not whether a "lease" is essential to production, which appears to have been the concern of the Court in *Panhandle Eastern*. Rather, the question is whether a transfer of a gas lease is tantamount to a sale of gas for resale in interstate commerce and thus within the jurisdiction of the Commission. The Commission does not seek here to regulate the activity of producing gas. It seeks to regulate a transfer of gas by an independent producer to an interstate pipeline for resale in interstate commerce and such a *transfer*, whether by conveyance of the gas or by purchase agreement, is no less a transfer, no less a sale which the Commission is obligated to regulate under the terms of Section 1(b) of the Act.

Finally, in decisions prior to *Panhandle Eastern*, this Court had indicated that the production and gathering exemption in Section 1(b) relates only to control over the *activities* involved. *Colorado Interstate Gas Co. v. Federal Power Commission*, 324 U.S. 581, 603 (1945); *Interstate Natural Gas Co. v. Federal Power Commission*, 331 U.S. 682, 690 (1947).

In the *Colorado Interstate* case, this Court was faced with the question whether this exemption prevented the Commission from reflecting production and gathering facilities of a natural gas pipeline company in the rate base for rate making purposes. In

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15. Dissenting opinion, *Federal Power Commission v. Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 516 (1949).

holding that such reflection was permitted, the scope of the exemption was defined as follows:

> "That does not mean that the part of § 1(b) which provides that the Act shall not apply 'to the production or gathering of natural gas' is given no meaning. Certainly that provision precludes the Commission from *any control over the activity of producing or gathering natural gas. For example, it makes plain that the Commission has no control over the drilling and spacing of wells and the like.* (324 U.S. 581, 602-3; Emphasis added.)

It is submitted that this interpretation of the exemption is more perceptive than that in *Panhandle Eastern.*

III. In Other Areas of Federal Regulation This Court Has Refused to Countenance Agreements or Statutory Constructions Which Avoid Regulation.

Respondents' obvious attempt to seize upon the broad statement in the *Panhandle Eastern* case in order to achieve nonregulation is nothing new to this Court. In other fields of regulation there have been similar attempts. However, this Court has made clear that what counts in such cases is what the parties actually do and not the words they use.

In the antitrust field, retail price maintenance agreements are unlawful combinations to suppress competition. *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U.S. 373 (1911). But this Court has said that judicial inquiry in such cases does not stop with a search of the record for evidence of purely contractual arrangements. Thus, is it unlawful for a manufacturer to secure adherence to his suggested prices by means which go beyond his mere declination to sell to a customer who will not observe his announced policy. *United States v. Parke-Davis & Co.*, 362 U.S. 29 (1960). Actions speak louder than words.

Similarly, in securities regulation under the Investment Advisers Act of 1940, it has been held that the statutory proscrip-

tion of "any practice which operates as a fraud or deceit" does not require establishing the elements of technical common law fraud, particularly proof of intent to injure and actual damage. Rather, the statute intended a "broad remedial construction" which requires disclosure of a personal interest in recommended securities. *Securities and Exchange Commission v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963).

And during this term, under the National Labor Relations Act, this Court has held that an employer cannot avoid the duty of collective bargaining with the union concerned by "contracting out" to an independent contractor the work of the union employees under similar working conditions. *Fibreboard Corporation v. National Labor Relations Board*, 379 U.S. 203 (1964).

These cases illustrate that the purpose of regulatory legislation cannot be avoided by technical arrangements—rather, the Court will look through such arrangements to the result reached. California urges that this case requires the same penetrating analysis.

If producers and pipelines are to be permitted to exclude a sale of natural gas for resale in interstate commerce from the regulatory jurisdiction of the Commission by labeling the transfer a "lease sale", form will have triumphed over substance and consumer protection will have been sacrificed in the name of the art of conveyancing. This Court has indicated time and again in its decisions involving the jurisdiction of the Commission under the Natural Gas Act that the purpose of that Act is to provide a comprehensive scheme of regulation. *Panhandle Eastern Pipe Line Co. v. Public Service Commission of Indiana*, 332 U.S. 507, 520 (1947); *Federal Power Commission v. Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 28 (1961); *California v. Lo-Vaca Gathering Co.*, 33 U.S.L. Week 4159, 4160 (U.S. Jan. 18, 1965). Respondents' device, which is designed to find an "attractive gap" in that scheme, cannot be upheld.

CONCLUSION

For the foregoing reasons, California submits that the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

RICHARD E. TUTTLE
Chief Counsel

J. CALVIN SIMPSON
Senior Counsel

WILLIAM N. FOLEY
Assistant Counsel

Attorneys for the People of the State of California and the Public Utilities Commission of the State of California

March 9, 1965.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 644

THE UNITED GAS IMPROVEMENT COMPANY, *Petitioner*

v.

CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, M. H. MARR, SUN OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION, *Respondents*

No. 693

FEDERAL POWER COMMISSION, *Petitioner*

v.

M. H. MARR, SUN OIL COMPANY, CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION, *Respondents*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' OBJECTIONS TO MOTIONS FOR LEAVE TO FILE BRIEFS AMICI CURIAE

JOHN A. WARD, III
HERF M. WEINERT
Of Counsel

LLOYD F. THANHOUSER
THOMAS H. BURTON, JR.
Of Counsel

DONLEY C. WERTZ
JOHN T. GUYTON
Of Counsel

JACK D. HEAD
KEITH M. PYBURN
Of Counsel

ROBERT E. MAY
Counsel for Respondent Sun Oil Company

DAVID T. SEARLS
Counsel for All Respondents

BRUCE R. MERRILL
Counsel for Respondent Continental Oil Company

W. MCIVER STREETMAN
Counsel for Respondent General Crude Oil Company

STANLEY M. MORLEY
Counsel for Respondent M. H. Marr

W. D. DEAKINS, JR.
Counsel for Respondent Texas Eastern Transmission Corporation

Dated: March 17, 1965

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Supreme Court of the United States

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On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' OBJECTIONS TO MOTIONS FOR LEAVE TO FILE BRIEFS AMICI CURIAE

The Respondents M. H. Marr, Sun Oil Company, Continental Oil Company, General Crude Oil Company, and Texas Eastern Transmission Corporation were served on or about March 12, 1965 with copies of Motions for Leave to File Briefs Amici Curiae by the following Applicants:

(a) In Case No. 693, Motion of the People of the State of California and the Public Utilities

Commission of the State of California for Leave to File Brief Amici Curiae in Support of Petitioner;

(b) In Cases No. 644 and No. 693, Motion for Leave to File Brief of the Southern California Gas Company, Southern Counties Gas Company of California, and Pacific Lighting Gas Supply Company, as Amici Curiae.

Each motion states that the consent of the Petitioners in such cases has been obtained, and that the consent of the Respondents has been refused, or has not been obtained. Pursuant to Rule 42(3) of the Revised Rules of this Court, Respondents state below their reasons for withholding consent.

Reasons for Withholding Consent

1. None of the Applicants claims to be entitled to file a brief Amicus Curiae without consent under Rule 42(4), and no Applicant qualifies for such privilege. The brief of the Public Utilities Commission on behalf of the People of the State of California is not that of a state sponsored by its attorney general, nor that of a political subdivision of a state, but rather it is the brief of an agency of a state, to which the privilege does not extend.

2. Neither motion sets forth facts or questions of law that have not been presented by the parties Petitioner, the Federal Power Commission and The United Gas Improvement Company, whose briefs are now before the Court.

3. Neither motion presents any reason for believing that facts or questions of law relevant to the disposi-

tion of the cases will not be presented adequately by the parties Petitioner.

4. The motions show that Applicants' claimed interest in the subject matter of the cases is remote and speculative, concerned only with the conjectural impact in the future of a decision in these cases.

5. The additional or novel facts offered by Applicants in their motions have no relevancy to the disposition of the cases, but on the contrary are pertinent solely to the Applicants' unsuccessful effort to show that they have some direct and legitimate interest in the outcome.

The motions of Applicants for leave to file briefs amici curiae should be denied.

Respectfully submitted,

JOHN A. WARD, III
HERF M. WEINERT
Of Counsel

LLOYD F. THANHOUSER
THOMAS H. BURTON, JR.
Of Counsel

DONLEY C. WERTZ
JOHN T. GUYTON
Of Counsel

JACK D. HEAD
KEITH M. PYBURN
Of Counsel

Dated: March 17, 1965

ROBERT E. MAY
Counsel for Respondent
Sun Oil Company

DAVID T. SEARLS
Counsel for All Respondents

BRUCE R. MERRILL
Counsel for Respondent
Continental Oil Company

W. McIVER STREETMAN
Counsel for Respondent
General Crude Oil Company

STANLEY M. MORLEY
Counsel for Respondent
M. H. Marr

W. D. DEAKINS, JR.
Counsel for Respondent
Texas Eastern Transmission Corporation

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Nos. 644 and 693

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FEDERAL POWER COMMISSION,
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Respondents.

ON [redacted] WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF

ABE FORTAS
1229 Nineteenth Street, N.W.
Washington, D. C. 20036
Of Counsel for all Respondents

DAVID T. SEARLS
First City National Bank Building
Houston, Texas 77002
Counsel for all Respondents

(List of Counsel for Individual Respondents on Inside Front Cover)

Dated, April 14, 1965

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LLOYD F. THANHOUSER
THOMAS H. BURTON, JR.
P. O. Box 2197
Houston, Texas 77001

Of Counsel for Respondent
Continental Oil Company

BRUCE R. MERRILL
P. O. Box 2197
Houston, Texas 77001

Counsel for Respondent
Continental Oil Company

W. McIVER STREETMAN
Humble Building
Houston, Texas 77002

Counsel for Respondent
General Crude Oil Company

DONLEY C. WEBTZ
2500 Republic National Bank Building
Dallas, Texas 75201
and
JOHN T. GUYTON
867 Texas Eastern Building
Shreveport, Louisiana

Of Counsel for Respondent
M. H. Marr

STANLEY M. MORLEY
1700 K Street, N.W.
Washington, D. C. 20006

Counsel for Respondent
M. H. Marr

JOHN A. WARD, III
1608 Walnut Street
Philadelphia 3, Pennsylvania
and
HERF M. WEINERT
Petroleum Building
Beaumont, Texas

Of Counsel for Respondent
Sun Oil Company

ROBERT E. MAY
1700 K Street, N.W.
Washington, D. C. 20006

Counsel for Respondent
Sun Oil Company

JACK D. HEAD
Southern National Bank Building
Houston, Texas 77002
and
KEITH M. PYBURN
852 Pennsylvania Building
Washington, D. C. 20004

Of Counsel for Respondent
Texas Eastern Transmission Corporation

W. D. DEAKINS, JR.
2100 First City National Bank Building
Houston, Texas 77002

Counsel for Respondent
Texas Eastern Transmission Corporation

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ABBREVIATIONS AND ITALICS

The following abbreviations of the names of the parties involved are used generally throughout this brief:

Abbreviation	*Refers to*
Assignors	Respondents Continental, General Crude, Marr and Sun, collectively
Continental	Respondent Continental Oil Company
FPC or Commission	Petitioner Federal Power Commission in No. 693
General Crude	Respondent General Crude Oil Company
Louisiana Gas	Louisiana Gas Corporation
Marr	Respondent M. H. Marr
PSC	Public Service Commission of the State of New York
Sun	Respondent Sun Oil Company
Texas Eastern	Respondent Texas Eastern Transmission Corporation
UGI	Petitioner The United Gas Improvement Company in No. 644

Emphasis by means of *italics* in all quotations herein has been supplied by us, unless otherwise noted.

Nos. 644 and 693

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

THE UNITED GAS IMPROVEMENT COMPANY,
Petitioner,

v.

CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, M. H. MARR, SUN OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION,
Respondents.

FEDERAL POWER COMMISSION,
Petitioner,

v.

M. H. MARR, SUN OIL COMPANY, CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENTS' BRIEF

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is reported in 336 F. 2d 320 and is reprinted at R. 1277-1289.

The opinions and orders of the Commission which were reviewed by the Court of Appeals are as follows: Opinion and Order No. 378, issued February 6, 1963, 29 F.P.C. 249 (R. 962-981); Concurring Opinion of O'Connor, C., 29 F.P.C. 258 (R. 982-984); Order issued April 2, 1963, 29

F.P.C. 692 (R. 1136-1139); Opinion and Order No. 378-A, issued July 12, 1963, 30 F.P.C. 153 (R. 1223-1230); Dissenting Opinion of Woodward, C., 30 F.P.C. 157 (R. 1230-1233).

QUESTIONS PRESENTED

As observed by the Court below: "The principal question to be decided is whether the Commission has jurisdiction over these lease transactions" (336 F. 2d at 323; R. 1282-1283). More specifically, that principal question, as well as further questions presented by the record herein, are stated as follows:

1. Whether FPC has jurisdiction over a conveyance of leasehold interests when such conveyance is made prior to any connection to an interstate pipeline, or any sale or movement in interstate commerce, of the gas produced from the leased properties.

2. Whether a conveyance of leasehold interests in properties located wholly inside the boundaries of a single state constitutes a "sale in interstate commerce of natural gas for resale" within the contemplation of the Natural Gas Act.

3. Whether the Commission is bound by the mandate of a U. S. Court of Appeals which has held that FPC lacks jurisdiction over a conveyance of leasehold interests and has remanded the cause to the Commission for further proceedings not inconsistent with the Court's opinion, where no appeal from the Court of Appeals' judgment was sought or taken and such judgment accordingly became final.

STATUTES INVOLVED

The Natural Gas Act, 52 Stat. 821-833, 15 U.S.C. §§ 717-717w, provides in pertinent part as follows:

> Section 1(b). The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas

for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

Sec. 2. When used in this Act, unless the context otherwise requires —

* * *

(5) "Natural gas" means either natural gas unmixed, or any mixture of natural and artificial gas.

(6) "Natural-gas company" means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

(7) "Interstate commerce" means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

Sec. 19(b). Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court . . . a written petition praying that the order of the Commission be modified or set aside in whole or in part. . . . Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. . . . The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification. . . .

STATEMENT OF THE CASE

Summary

Respondent Texas Eastern owns and operates an extensive gas transmission pipeline system running from south Texas to New York City. In the late 1950's, Texas Eastern was in urgent need of a substantial additional supply of natural gas to meet its customers' mounting requirements. To this end, Texas Eastern purchased from the Assignors (respondents Continental, Sun, Marr and General Crude) leasehold interests in lands in southern Louisiana containing a large natural gas deposit known as the Rayne Field.

The conveyance of leasehold interests was concluded on July 27, 1959. In consummating the transaction, the parties relied on the fact that a month previously, on June 23, 1959, the Commission had unanimously and unconditionally approved the whole transaction. At that time, and for a long time thereafter, the Commission disclaimed any jurisdictional authority over the Assignors' sale of their leases. Such disclaimer was based on (a) the fact that the sale of leases was *not* a sale of natural gas, and (b) the established law[1] that the Commission can exercise no jurisdiction over transfers of gas leases. This FPC position was expressly upheld and unanimously confirmed on December 8, 1960, by the Court of Appeals for the District of Columbia Circuit.[2] The case was remanded to the Commission, however, with instructions either to disclaim approval of the price Texas Eastern was paying for the leases or to permit Texas Eastern to justify such price.

The jurisdictional question, which is now the central issue in this case, came to life again three and a half years after the lease sale had become a *fait accompli*. On February 6, 1963, the Commission completely reversed its former position (and also presumed to reverse the D.C. Court of Appeals) by asserting for the first time that it *did* possess

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[1] *FPC* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949).
[2] *PSC* v. *FPC*, 287 F. 2d 143.

jurisdiction to regulate and revise the terms of the Assignors' sale of their leasehold interests.

On August 3, 1964, the Court of Appeals for the Fifth Circuit unanimously reversed the orders wherein the Commission had asserted such jurisdiction.[3] That determination is here for review.

The conveyance of Rayne Field leasehold interests was, according to FPC's own findings, negotiated by the parties at arm's length. It was consummated in good faith with the Commission's unconditional approval. The arrangement was *not,* as petitioners now claim, a "device" to evade regulation. The form of the transaction was also its substance — a valid transfer of title to leasehold rights in real property. Congress deliberately withheld from the Commission power to regulate any transaction of this nature; lack of jurisdiction here neither frustrates effective FPC regulation, nor creates any "gap" in the regulatory system envisioned by the Natural Gas Act. Without such jurisdiction, the Commission possesses ample regulatory authority to protect gas consumers.

In this brief we shall substantiate each and all of the statements made in the preceding paragraph. The foundation for this substantiation consists of the facts appearing in the record. A complete and accurate summary of those facts is set forth below.

The abandoned proposal to sell gas

Texas Eastern was confronted with the problem of obtaining a substantial increase in its supply of natural gas in order to satisfy the growing requirements of its customers (R. 6, 8, 15, 358, 552). The Rayne Field, in Acadia Parish, Louisiana, represented the only big,[4] uncommitted gas

[3] *Marr* v. *FPC*, 336 F. 2d 320.

[4] The Rayne Field is a deep, multi-strata gas-condensate field estimated to be capable of producing over one trillion cubic feet of natural gas and some 51 million barrels of hydrocarbon liquids (R. 25, 1186; Ex. M-13, R. 163; Ex. X-2, R. 745).

reserve which was readily accessible to Texas Eastern's trunkline system (R. 6-8, 11, 15, 450, 459, 547, 553; and see map, Ex. X-7, R. 815). All that was needed to enable Texas Eastern to take gas from Rayne was a 22-mile spur line and one compressor station (R. 356, 374-375, 387). Texas Eastern therefore negotiated tentative contracts, dated February 1, 1957, with Continental, Sun, Marr and General Crude, under which Texas Eastern proposed to purchase their Rayne Field gas production for a period of 20 years (Ex. 3-f, R. 99-154).[5]

In the spring of 1957 applications were filed with the Commission by Texas Eastern (for certification of, among other facilities, the short pipeline spur and the compressor station) and by Continental, Sun, Marr and General Crude (for certification of the proposed long-term gas sales) (R. 354-365, 370-371, 450).

Each of the tentative contracts provided that unless all necessary governmental authorizations were obtained by September 1, 1957, either party might cancel the proposed arrangement (R. 102-103). In accordance with this provision, the contracts were later cancelled. Sun, Marr and General Crude withdrew their certificate applications during July 1958 (R. 27, 406-410, 451). Continental filed a withdrawal of its application in January 1959 (R. 425-427).

The long-term gas purchase contracts accordingly never became effective; no gas was ever sold or delivered thereunder.[6]

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[5] Continental, Sun, Marr and General Crude together held some 150 separate leases, representing approximately 95% of the "working interest" in the Rayne Field (R. 26, 208-325, 1187). (The "working interest" excludes "royalty interests" reserved by landowners when they originally grant mineral leases covering their lands.)

[6] As FPC frankly conceded in its July 1960 brief to the D.C. Court of Appeals, "the original program . . . has little bearing on the issues before this Court" (R. 1185). That is still true.

The lease sale agreements

Texas Eastern entered into lengthy negotiations to acquire the Rayne Field leasehold interests owned by Continental, Sun, Marr and General Crude (R. 27, 416). Such negotiations were, as the Commission found, carried on at arm's length and in good faith (R. 462, 1196-1197, 1199, 1209); and on December 4, 1958, such negotiations resulted in the execution by the parties of definitive agreements (R. 27, 46-47, 416).[7] The essential features of these agreements were as follows:

By a "Lease Sale Agreement," the Assignors (Continental, Sun, Marr and General Crude) agreed to sell to Louisiana Gas (an intermediary corporation) their Rayne Field leases in accordance with the provisions of an "Assignment and Conveyance" (R. 27-28, 40-41, 457, 1188; Ex. M-14, R. 171-331). The cash consideration payable to the Assignors totaled $134.4 million,[8] of which $12.4 million was to be paid at the closing and the balance of $122.0 million was to be paid in installments over a period of 16 years (R. 28, 457, 1188). The installment obligations were to be evidenced by promissory notes of Louisiana Gas, secured by a mortgage upon the leasehold interests and other properties being conveyed (R. 28, 457-458, 1188-1189; Ex. M-14, R. 338-348, 349-353; Ex. X-12, R. 820; Ex. X-13, R. 821). The amount payable in installments was not related to the amount of gas to be produced (R. 68-69). The notes provided, however, that in the event of excep-

[7] The voluminous agreements are in evidence as Exhibits M-14, M-20 and M-21 (R. 167-353). Their terms are outlined and explained in the testimony of Texas Eastern's witnesses (R. 27-30, 37-49, 68-70, 78, 84-89), in the Commission's Opinion No. 322 (R. 456-459, 462), and in the Commission's brief to the D.C. Court of Appeals (R. 1188-1190, 1196).

[8] Productive leases are oftimes transferred against payment of large considerations; there was nothing unusual about this aspect of the agreements (R. 70).

tionally high rates of production, payments on the last-maturing notes would be accelerated (R. 351, 574).[9]

It was further provided that when Louisiana Gas acquired the Rayne Field leases and related properties from the Assignors, Louisiana Gas would forthwith convey the same to Texas Eastern, subject, however, to the obligations evidenced by the promissory notes and mortgages; but Texas Eastern assumed no liability for such obligations (R. 28-29, 37-38, 42-43, 458-459, 1189; Ex. M-14, R. 167-171, 333-337).[10]

The "Assignment and Conveyance" provided that Assignors "do by these presents hereby transfer, assign and convey . . . unto Louisiana Gas . . . the oil, gas and mineral leases, the surface leases and option and rights of way described in Exhibit 'A' . . . together with all those wells which are presently completed as gas wells and related lease and well equipment (surface and subsurface), gathering and flow lines, tanks, separators and other equipment and personal property relating thereto . . . and such rights of ingress, egress and easements for such facilities as Grantors have the right to convey" (Ex. M-14, R. 184).

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[9] This, of course, was simply a means of protecting the Assignors against premature devaluation of the collateral (i.e., reserves in the ground) which secured the unpaid balance of the purchase price.

[10] Louisiana Gas was thus used as an intermediary at the insistence of Texas Eastern (R. 47-48, 88). Texas Eastern's reasons for so insisting were twofold: First, Texas Eastern would not have to carry the $122 million of note obligations as a liability on its books or balance sheets (R. 47-48, 84-85, 462); and, secondly, if some catastrophe should destroy the field's productive reservoirs, Texas Eastern could relinquish the leases without being subject to further liability (R. 48-49, 1189). For similar reasons, it is common and customary in the petroleum industry, in transactions such as this one, to transfer productive leaseholds through an intermediary corporation; this method of handling the Rayne Field lease transfers was by no means unique (R. 84, 86-87, 462, 1188, 1196).

The "Assignment and Conveyance" went on to provide (R. 184-194) that the transfer of leases was subject to the following reservations: (a) so-called "deep rights"; i.e., all rights below the deepest zone (13,650 to 13,890 feet below the surface) then known to be productive in the Rayne Field; (b) oil and other minerals, except gas and condensate;[11] and (c) a production payment, payable out of the net proceeds from condensate production after deduction of Rayne Field operating costs; but this production payment was limited: it is to terminate either when total gas production (after extraction of liquids) equals 613.4 billion cubic feet or when only 30 billion cubic feet of recoverable gas reserves remain in the ground (R. 28, 193-194, 458, 1188, 1189-1190).[12]

The reserved production payment was, in effect, part of the consideration running to the Assignors (R. 78, 85); in other words, absent the reserved production payment, Texas Eastern would have had to pay substantially more in cash to acquire the leases. Yet, Texas Eastern clearly benefited from this arrangement, because it relieved Texas Eastern from all Rayne Field operating expenses (R. 80, 83-84, 458, 1190, 1192-1193; Ex. M-14, R. 188-193). Moreover, after the production payment comes to an end, Texas Eastern can anticipate revenues from condensate production, over and above Rayne Field operating expenses, in excess of $9 million (R. 565-566; Ex. X-4, Col. F, R. 751; Ex. X-11, Col. E, R. 819).

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[11] "Condensate" included both "separator liquids" (liquid hydrocarbons which existed in the gaseous phase under original reservoir conditions and which are recovered at the surface by means of mechanical separators) and "natural gas liquids" (liquid hydrocarbons recovered by operation of processing facilities at a natural gasoline extraction plant) (R. 185, 193, 581-585).

[12] Retention of production payments in connection with sales of productive properties is common practice in the petroleum industry (R. 83).

FPC Opinion No. 322

The hearings in Texas Eastern's pending certification proceedings were reopened for receipt of evidence on the lease purchase proposal (R. 412-422, 439-443), and such further hearings were held during March 1959 (R. 19-353). At the outset, counsel for UGI (Petitioner here in No. 644) hailed Texas Eastern's proposed acquisition of Rayne Field leasehold interests "as a constructive step forward in the light of existing circumstances" and stated that "we will express no objection before the Federal Power Commission to the certification of your project as now proposed" (R. 22-23).[13] Although UGI and two other Texas Eastern customers had opposed approval of the original (but later abandoned) gas sale contracts, none of those customers voiced any objection to Texas Eastern's acquisition of the Rayne Field leases or to the issuance of a certificate for Texas Eastern's facilities (R. 455, 1195).

On June 23, 1959, the Commission issued its unanimous Opinion No. 322, granting Texas Eastern an unconditional certificate of public convenience and necessity covering the transportation and compression facilities required to connect the Rayne Field and to accommodate the additional volumes of gas to be taken from that field (21 FPC 860; R. 446-467). In addition to reviewing the prior proceedings and the record evidence, including the lease sale agreements, the Commission found and held in its Opinion No. 322, that FPC had *"no authority"* to certificate the acquisition of Rayne Field leases; that the acquisition "is required by the public convenience and necessity"; that, aside from the price Texas Eastern would pay, "[t]he public will other-

[13] UGI counsel reserved only the right to participate in future Texas Eastern FPC rate proceedings and to question "any increases in your [Texas Eastern's] overall cost of service which might result from additional cost to be incurred" in connection with the lease acquisition (R. 23).

wise benefit from Texas Eastern's acquiring these leases instead of purchasing the gas"; that "the purchase of the leases is *not* a contract to purchase gas"; that Texas Eastern's proposed method of acquisition through an intermediary corporation "is *not* unique in the oil and gas business"; and that the whole lease purchase arrangement had been "arrived at on the basis of arm's-length bargaining" (R. 456, 462).

The Commission accordingly certificated the Rayne Field spur line and compressor station and gave Texas Eastern six months within which to construct those facilities and place them "in actual operation" (R. 466). No stay of this order was ever sought or issued.

Conditions precedent fulfilled

The "Lease Sale Agreement" required that four conditions be met or waived before consummation of the sale of Rayne Field leases: (1) approval by Texas Eastern's attorneys of the Assignors' leasehold titles; (2) issuance by the Internal Revenue Service ("IRS") of a ruling that Assignors' gain from sale of their Rayne Field leasehold interests would be treated as long-term capital gain for income tax purposes; (3) issuance of satisfactory certificates of public convenience and necessity authorizing construction and operation of the Texas Eastern facilities needed to take gas from the Rayne Field and transport it to market areas; and (4) dismissal or withdrawal of the Assignors' applications for certification of the defunct 1957 gas sale contracts (R. 29-30, 457; Ex. M-14, R. 173-176). Each of these conditions was met (R. 1188):

(1) The Texas Eastern attorneys' opinion letter, approving leasehold titles and related matters, was written on February 3, 1959 (Ex. M-11, R. 158-160).

(2) The IRS tax ruling was issued on January 13, 1959 (R. 1176-1181). It reviewed the provisions of all of the lease

sale agreements (R. 1177-1180) and "held that the gain on the sale of the properties being disposed of will be subject to the tax treatment provided by section 1231" — i.e., treatment as long-term capital gain (R. 1181).[14] FPC was fully apprised of this IRS ruling (R. 428-438).

(3) Unconditional certification of Texas Eastern's proposed Rayne Field transportation and compression facilities was granted on June 23, 1959, in FPC Opinion No. 322 (R. 456, 465-466).

(4) Assignors' withdrawals of their applications to sell gas under the cancelled 1957 contracts were expressly permitted by the Commission (R. 406-410, 425-427, 440, 464, 466).

Consummation of the sale of leases

The Rayne Field lease sale was concluded on July 27, 1959 (R. 554-555, 588, 721, 908). The documents transferring or affecting title to the properties were all duly recorded in accordance with Louisiana law (R. 1021, 1022, 1024).[15]

On the day of the closing, a "Management Agreement" was entered into, under which Continental was employed as agent of Louisiana Gas (Texas Eastern) to operate the wells in the Rayne Field (R. 578; Ex. X-19, R. 827-858). The nature of this "Management Agreement" and the reasons for it are set out in its preamble: "Continental . . . has heretofore drilled and operated high-pressure gas wells

[14] In so ruling, IRS necessarily found the proposed transaction to be a *bona fide* sale of realty interests which Assignors had owned for more than six months.

[15] The effect of such recordations was to vest Texas Eastern with absolute title to the leasehold interests and related properties which had been conveyed, subject only to the mortgages thereon. See La. Rev. Stat. 9: 2721; La. Civil Code, Tit. IV, Arts. 2251-2254, 2264-2266; La. Civil Code, Tit. IX, Art. 2725.

completed in the particular leasehold interests covered by the Assignment and Conveyance and has thus supervised the development of the same and is thoroughly familiar with the engineering and operating problems relating thereto . . . Continental has the personnel and facilities necessary to operate such properties safely and efficiently . . . and is willing to operate same *as the managing agent* of Louisiana Gas [i.e., Texas Eastern, which] . . . has had no experience in operating gas properties in the Rayne Field or in the vicinity thereof, and *due to extremely high pressure in the reservoirs and the hazards encountered by an inexperienced Operator,*[16] Louisiana Gas has acquired such leasehold interests . . . with the understanding that it could obtain the experienced and capable management of such properties by Continental" (R. 827-828).[17]

The "Management Agreement" specified that Continental should conduct operations thereunder solely "as managing agent" and "authorized representative" of Louisiana Gas (R. 828). The agreement also provided that it is Louisiana Gas, and not Continental, who has the right to make the really important decisions, such as: whether and where

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[16] The average depth of the productive formations in the Rayne Field varied from 10,700 to 13,700 feet, and reservoir pressures encountered there were abnormally high, ranging in all but one of the horizons from 6,855 to 11,000 pounds per square inch (R. 25, 690-691; Ex. M-13, R. 163; Ex. X-2, R. 745).

[17] Verifying the accuracy of these recitals, Texas Eastern's vice president testified, without contradiction, as follows:

> "We were purchasing a property which represented an important adjunct to our gas supply. The wells from which gas is produced from this property are deep, and the reservoirs in this property are under high pressure. We thought it would be in the public interest to retain as Operator of these wells the one organization in the world that knew the most about them. That was the Continental Oil Company which had supervised the drilling and completion of all the Rayne Field wells. Consequently, we entered into the Management Agreement" (R. 579).

wells shall be drilled or deepened (Art. 1(a), R. 829); whether secondary recovery or recycling operations shall be conducted (Art. 5(a), R. 837-838); and what volume of gas shall be nominated for production each month (Arts. 5(e) and 5(f), R. 839-840).

Subsequent connection of Rayne Field to the Texas Eastern system

In August of 1959 — the month following the closing — the Rayne Field was first connected to Texas Eastern's pipeline system and gas produced by Texas Eastern from its Rayne Field leases began to be transported in interstate commerce (R. 721, 722, 906, 908). The record "is clear that the natural gas under the Rayne Field leases acquired by Texas Eastern, *was not*, at the time of the acquisition, connected with any pipeline transporting natural gas in interstate commerce and, further, the natural gas under the Rayne Field leases acquired by Texas Eastern had not, at the time of the acquisition, been dedicated to any sale in interstate commerce." (R. 885; italics are those of FPC Examiner Frazee, 29 FPC at 262-263).

Review proceedings in the D. C. Court of Appeals

The Public Service Commission of the State of New York (PSC), an intervenor in the FPC proceedings, stood alone in objecting to the lease sale arrangement (R. 455, 1195). Following denial on August 21, 1959, of its application for rehearing (R. 467-477), PSC petitioned for review in the Court of Appeals for the District of Columbia Circuit. Texas Eastern intervened and joined the Commission in opposing PSC's contentions.

As respondent, the Commission filed its brief in the D.C. Court of Appeals under date of July 11, 1960 (R. 1182-1214). In that brief the Commission correctly stated that

this case "centers about the sale of leases" and involves neither "a purchase of gas in place" nor "a contract to sell gas as produced by the assignors"; that "the assignors would wholly alienate their rights to produce natural gas" and "will not produce the gas whose cost is the bone of contention in this case" (R. 1185, 1188). Accordingly, the Commission concluded and repeatedly asserted — again correctly — that the sale and purchase of leases was beyond FPC's jurisdiction (R. 1182-1185, 1200-1202, 1205, 1212). Specifically, the Commission relied on this Court's holding in *FPC* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949) that "while even undeveloped leases might be 'facilities,' they are not 'facilities subject to the jurisdiction of the Commission' because Section 1(b) exempts 'production or gathering' from the coverage of the Act" (R. 1201).

The D. C. Court of Appeals' opinion and judgment

The Court of Appeals for the District of Columbia rendered its opinion and judgment on December 8, 1960. *PSC* v. *FPC*, 287 F. 2d 143 (R. 862-868). The Court expressly upheld the Commission's contention that it lacked jurisdiction over the sale of Rayne Field leases:

> "Instead of purchasing gas in the usual manner from the four producer-sellers, Texas Eastern proposed to acquire leasehold interests in the reserves formerly committed to the contracts, for a total price of $134,395,700.00.
>
> "The significance of this change in the form of the transaction, at least from the standpoint of the producer-sellers, is manifest. Sales of natural gas by an independent producer are subject to regulation under Sections 4 and 5 of the Natural Gas Act. Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954). *But the Commission has been held to lack jurisdiction over gas leases.* Federal Power Commission v. Panhandle Eastern Pipe Line Co., 337 U.S. 498 (1949)" (R. 864).

"It is of no importance here that the transactions by which Texas Eastern proposes to acquire the gas will themselves be, by virtue of a change in form, *beyond the regulatory control of the Commission*" (R. 866).

The Court further held, however, that there was insufficient record evidence to support the Commission's apparent general approval of the terms of the lease acquisition arrangement (R. 865). The Court pointed out that "the Commission's warrant to inquire arises by virtue of its responsibility to regulate the purchaser [Texas Eastern], regardless of the status of the seller" (R. 866). Accordingly, the Court remanded the case with directions that the Commission follow one of "two courses": either (1) "expressly disclaim any approval of the price to be paid," or (2) "permit Texas Eastern to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity" (R. 867). Both at the end of its opinion and in its formal mandate, the D.C. Circuit limited the remand to "proceedings not inconsistent with the opinion of this court" (R. 867, 868).

Proceedings after remand

By order issued on July 14, 1961 (26 F.P.C. 167; R. 869-872), the Commission elected to follow the second of the "two courses" prescribed by the Court of Appeals; i.e., to reopen the proceedings and afford Texas Eastern an opportunity to justify its acquisition costs. Among other things, this July 14th Order defined the issues to be tried in the reopened proceeding and, in so doing, made no reference whatever to any possible assertion of FPC jurisdiction over the sale of leases.

Further hearings were held before FPC Presiding Examiner Frazee during the latter part of 1961. None of the

Assignors was represented at, or participated in, these hearings. Only Texas Eastern offered evidence, none of which had any bearing on the question of the Commission's jurisdiction over the sale of leases.

Texas Eastern's evidence in justification of its lease acquisition costs was massive and for the most part uncontroverted.[18] A summary of this evidence is set out in the Appendix to this Brief and highlights of it appear under Point IV of our argument (*post*, pp. 63-64).

Examiner Frazee rendered his Decision on June 29, 1962, (29 F.P.C. 259; R. 877-902) and therein adhered to the repeatedly established proposition in this case that the Commission has no jurisdiction over the sale of the Rayne Field leases (R. 885-887).[19]

FPC Opinion No. 378

Exceptions to Examiner Frazee's Decision were argued before the Commission on November 29, 1962, by counsel for Texas Eastern, various intervenors, and the FPC Staff (R. 720-743).[20] Counsel for UGI, while urging rejection of

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[18] Selected portions of Texas Eastern's cost justification evidence practically fill volume II of the record (pp. 482-720, 744-861).

[19] The Examiner's treatment of this jurisdictional question is quoted at some length in footnote 6 to the opinion below (R. 1281-1282). After disposing of that question, the Examiner went on to propose a method of regulating Texas Eastern (R. 896-899) — a method which the Commission refused to approve (29 F.P.C. at 256-257; R. 977-978).

[20] None of the Assignors took part in this argument, nor had they any apparent reason for appearing or being heard. Under the D.C. Court of Appeals' mandate, and according to the Commission's Order of July 14, 1961 (R. 869-872), the sole question at issue was whether or not Texas Eastern had established "by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity" (287 F. 2d at 146; R. 867).

the Examiner's conclusion that FPC lacked jurisdiction over the sale of leases, stated, *inter alia:* "we do not ... sist you assert this jurisdiction. Indeed, we suggest that you do not have to" (R. 724); and later: "we do not believe the Commission needs to assert jurisdiction over the transaction to effectively control the situation with which it is confronted here" (R. 727).[21]

On February 6, 1963, the Commission handed down its Opinion No. 378 (29 F.P.C. 249; R. 962-981), asserting for the first time that it *did* possess jurisdiction over the sale of Rayne Field leases; that Assignors had not actually conveyed interests in real property, but instead had sold a commodity, natural gas, for resale in interstate commerce; and that Assignors were therefore obligated, under the Natural Gas Act, to file with the Commission applications for certificates authorizing such sale, together with "appropriate rate schedules." Opinion No. 378 went on to command Assignors and Texas Eastern to rescind the lease sale they had consummated almost four years earlier and to enter into some unspecified new contractual arrangement, effective retroactively back to the day in August 1959 when Texas Eastern began taking gas from its Rayne Field leases.

FPC Opinion No. 378-A

After Assignors and Texas Eastern had filed applications for rehearing (R. 984-1135), the Commission, on April 2, 1963, issued an order purportedly granting such applications, but effectively denying them (29 F.P.C. 692; R. 1136-1139). Finally on July 12, 1963, the Commission issued its Opinion No. 378-A (30 F.P.C. 153; R. 1223-1230). Therein, FPC reasserted its jurisdiction over the Rayne Field lease

[21] Quotation in this brief of UGI's basic position on this point is not intended to reflect agreement with the method of regulation advocated by UGI.

sale, but postponed, pending judicial review, the requirement that the parties rescind their 1959 sale of leases and enter into a new, retroactive contractual arrangement.[22]

Commissoner Woodward's dissenting opinion.

Commissioner Woodward, who had not participated in Opinion No. 378 (R. 981), dissented from Opinion No. 378-A (30 F.P.C. 157; R. 1230-1233), pointing out succinctly the majority's numerous and grievous errors: (1) "assertion of jurisdictional authority over the sale of leasehold rights in Rayne Field, on the basis of an unsupported vague and obscure dissertation, is a complete reversal of its [FPC's] prior position in these proceedings"; (2) "the Commission commits grave error in attempting to exercise jurisdiction in areas forbidden to it by the Congress and the Supreme Court of the United States. . . . Without question, this is an unlawful assumption of jurisdiction"; (3) "The leasehold sale was not a sale in interstate commerce; it affected only rights and interests in real property located wholly within the State of Louisiana"; (4) the D.C. Circuit's opinion "conclusively settled the jurisdictional question . . . Any other conclusion disparages the Court of Appeals adjudication — this fact is indisputable. If permitted, this Commission's course of action would destroy the rights of parties to court review and render the decisions of the courts meaningless"; (5) "the majority errs in attempting to force the parties herein to revise their contracts . . . there is nothing in the Act which confers such absolute power on the Commission"; and (6) "the Commission's attempt to impart retroactive effect to its findings is totally invalid."

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[22] FPC warned the parties, nevertheless, that unless they eventually comply with its orders, they will be subject to prosecution for violating the Natural Gas Act (R. 1228).

The opinion of the Court below

On review, the Court of Appeals for the Fifth Circuit reversed the Commission's orders of February 6, 1963 (Opinion No. 378), April 2, 1963 (R. 1136-1139) and July 12, 1963 (Opinion No. 378-A), and remanded the cause to the Commission in respect of Texas Eastern, "to determine whether the public convenience and necessity require that the certificate [for Texas Eastern's Rayne Field facilities] be denied, granted, or granted conditionally, in view of the cost of acquisition" (336 F. 2d 320; R. 1277-1291).[23]

The Fifth Circuit's opinion, rendered on August 3, 1964, summarized the relevant facts (R. 1279-1283); discussed at some length this Court's controlling decision in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (R. 1283-1285); disposed of FPC's various arguments (R. 1285-1288); and concluded as follows (R. 1288):

> "We are bound by *Panhandle's* classification of leaseholds as being part of the 'physical activities, facilities and properties' used in production and gathering . . .
>
> "Thus, we conclude that the lease transactions in the instant cases are outside the Commission's jurisdiction. The Commission complains that this will leave a 'gap' in its regulatory powers. Fifteen years ago the Supreme Court in *Panhandle* authorized the Commission to bring this to the attention of Congress, and the Commission has repeatedly done so. If in its wisdom Congress has declined to act, we have neither the power nor the inclination to act in its stead."[24]

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[23] In so remanding the case, the Court "note[d] with regret that this is essentially what the D.C. Circuit told the Commission to do three and one-half years ago" (R. 1289).

[24] The Court further noted that: "Our decision as to jurisdiction makes unnecessary any determination of such questions as whether the D.C. Circuit opinion was binding on the Commission as the 'law of the case'" (R. 1288).

The Fifth Circuit's determination in our case has since been unanimously followed by the Tenth Circuit Court of Appeals. *Pan American Petroleum Corp.* v. *FPC*, 339 F. 2d 694.[25]

The New York Public Service Commission (PSC), which took this case to the D.C. Circuit, and which was an active respondent in the review proceedings before the Fifth Circuit below, did not join in seeking certiorari in this Court.

SUMMARY OF ARGUMENT

I. This Court's landmark decision in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Company*, 337 U.S. 498 (1949), is controlling. The question there presented was, as here, the scope of FPC jurisdiction over transfers of leases covering gas reserves. The holding in *Panhandle* was that such transfers were beyond the coverage of the Natural Gas Act, because gas leases are an essential part of production; and production facilities and producing properties are expressly exempt by Section 1(b) of the Act from FPC regulation.

Since the decision in *Panhandle*, its authority has never been dimmed or doubted by any court. It was cited approvingly by this Court in *Phillips Petroleum Co.* v. *Wisconsin*,

[25] After noting that the facts in the two cases were similar and that the Commission had advanced substantially the same arguments, the Tenth Circuit concluded as follows (339 F. 2d at 696):

> "Our inquiry, then, must determine whether the Pan American transfers were leases within the compulsion of *Panhandle*. We conclude, as did the Fifth Circuit in *Marr*, that the subject conveyances were leases and consequently not within the Commission's jurisdiction under section 7 of the Act but were exempt under section 1(b). We are in complete accord with the views expressed by Judge Rives in his able opinion in *Marr* and find them to be equally applicable to the case at bar."

347 U.S. 672, 678 (1954) for the exact proposition that the Section 1(b) exemption covers producing properties. The *Panhandle* doctrine has been applied and followed in numerous subsequent appellate decisions, including two in the case at bar.

Prior to February 6, 1963, the Commission itself consistently recognized and followed the doctrine of *Panhandle*. In line with this Court's recommendation, the Commission has since 1949 repeatedly asked for amendment of the Act so as to confer on FPC power to regulate natural-gas companies' dispositions of leases, but Congress has steadfastly declined to grant any such added authority. This strongly indicates that the requested authority had never actually been conferred. *Federal Trade Commission* v. *Bunte Bros.*, 312 U.S. 349, 352 (1941). Great weight must be given an agency's consistent interpretation of the law it administers, especially where the agency has sought to have the law amended but Congress has declined to do so and has thereby acquiesced in the agency's historical interpretation. *United States* v. *Bergh*, 352 U.S. 40, 46-47 (1956).

Apparent are the reasons for this congressional reluctance to endow the Commission with such further authority: it would invite expansion of federal jurisdiction into areas of purely local concern, cloud the title to countless mineral properties, and give FPC regulatory control over all oil and gas production.

Petitioners' attempts to "distinguish" *Panhandle* from the case at bar are all fallacious and futile. Likewise, petitioners' reliance on *Phillips* is misplaced, because that case concerned sales in interstate commerce of the commodity, natural gas, *after* its production, while *Panhandle*, like the case at bar, dealt solely with a conveyance of leasehold interests in realty *before* any gas therefrom had been produced for transportation or sale in interstate commerce.

II. Congress carefully limited the regulatory scope of the Natural Gas Act. *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission*, 332 U.S. 507, 516 (1957). The Act did not envision federal regulation of the entire natural-gas field to the limit of constitutional power. *FPC* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 502 (1949). Congress was "meticulous" only to invest the Commission with authority over certain aspects of this field, leaving the residue for state regulation. *FPC* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 8 (1960). To accomplish these ends, Congress specified in Section 1(b) that, so far as sales transactions are concerned, the Act applies only to sales of "natural gas" and only if such sales are made "in interstate commerce." The transaction here under review met neither of these jurisdictional prerequisites.

Within the contemplation of the Act, "natural gas" means a commodity — something capable of being transported and sold in commerce. "Natural gas," as defined in Section 2(5) of the Act, can only mean such a commodity. But natural gas does not become a commodity until it is extracted from the earth and reduced to possession. *West* v. *Kansas Natural Gas Co.*, 221 U.S. 229 (1911); *Pennsylvania* v. *West Virginia*, 262 U.S. 553, 586 (1923). When, therefore, the Assignors conveyed their leasehold interests, they did not sell a commodity; they sold nothing but interests in real estate. It follows that the conveyance of leases did not, and could not, constitute a sale of "natural gas."

Neither was the lease conveyance a transaction "in interstate commerce." It is a physical impossibility to sell "in commerce", interstate or otherwise, an interest in land located wholly within the State of Louisiana.

Section 1(b) makes the Act apply solely to transactions *in* interstate commerce; not to any transaction which might *affect* such commerce. The restrictive word "in" greatly

narrows the statute's scope. *Federal Trade Commission* v. *Bunte Bros.*, 312 U.S. 349, 355 (1941); *Polish National Alliance* v. *National Labor Relations Board*, 322 U.S. 643, 647 (1944). Moreover, Section 1(b) not only affirmatively limits FPC jurisdiction to sales *in* interstate commerce, but specifically excludes from such jurisdiction "any other . . . sale of natural gas."

The lease sale transaction here in question was purely local in character. It involved transfers of title to mineral interests in realty — a type of transaction over which the State has power to, and does, exercise regulatory control. If a transfer of title to leasehold interests could somehow be deemed a transaction in interstate commerce, then the State would be powerless to regulate such transfers. Congress never imagined, let alone intended, that the Natural Gas Act would produce such a grotesque result.

Petitioners attempt in vain to show that the conveyance of leasehold interests was, in effect, a "sale of natural gas in interstate commerce for resale." This whole argument is based upon five selected "features" of the transaction, each and all of which were valid, reasonable and in no wise unusual. When these five "features" are viewed objectively they are seen to be perfectly normal business arrangements which, as the Commission itself found, were worked out by the parties at arm's length and in good faith. Under no circumstances could any one of the features, or all of them together, transform a sale of leasehold interests in real property into a "sale of natural gas in interstate commerce for resale."

III. In *PSC* v. *FPC*, 287 F. 2d 143 (1960), the Court of Appeals for the District of Columbia expressly held that the Commission has no jurisdiction over the Assignors' con-

veyance to Texas Eastern of their Rayne Field leases. The D. C. Circuit remanded the case to the Commission "for further proceedings not inconsistent with the opinion of this court." The opinion directed the Commission to follow one of "two courses": either (1) disclaim approval of the price Texas Eastern was paying for the leases, or (2) reopen the record to permit Texas Eastern to justify its acquisition costs. No review of the D. C. Circuit's judgment was ever sought in this Court. Accordingly, it became "final" as provided in Section 19(b) of the Natural Gas Act. *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320, 336-337 (1958).[26] The Commission was thereby forever after precluded from determining the jurisdictional question in a way contrary to the D. C. Circuit's judgment.

The familiar rule of "the law of the case" also governs in this situation.[27] Under this rule, the Commission had no power or authority to deviate from the mandate of the D. C. Circuit and was foreclosed from making a determination different from that of the appellate court. Sound judicial policy dictates adherence to this "law of the case." *International Union* v. *Eagle-Picher M. & S. Co.*, 325 U.S. 335, 340, 341 (1945).

The Commission disobeyed the D. C. Circuit's mandate and made a determination which was diametrically contrary to the holding of the Court of Appeals on the jurisdictional question. This course of action, if permitted, would destroy the rights of the parties to court review of FPC orders and would render meaningless the appellate courts' decisions.

IV. There is no merit to the Commission's contention that the decision of the Court below frustrates "effective"

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[26] That case dealt with Sec. 313(b) of the Federal Power Act, which is identical with Sec. 19(b) of the Natural Gas Act.

[27] Pertinent decisions of this Court and U.S. Courts of Appeal on "the law of the case" are legion. We cite only 15 of them.

FPC regulation and creates a "gap" in the natural gas regulatory system. This contention is fruitless because (a) the Commission *does* have ample authority to regulate effectively pipeline acquisitions of leasehold interests; (b) any additional powers the Commission desires in this area can only be granted by Congress; and (c) the record in the instant case established that the Commission has no real need for additional authority.

The Commission can effectively protect gas consumers by determining the reasonableness of the cost of leases to the pipeline company in a certificate proceeding under Section 7(c) of the Act.[28] There is, accordingly, no prospect of "frustrated" regulation, no regulatory "gap", and no lack of regulatory protection for gas consumers.

Over four years ago, the D. C. Circuit directed the Commission to regulate Texas Eastern's acquisition of the Rayne Field leases by ascertaining whether the cost of such acquisition is consistent with the public convenience and necessity. Last August, the Fifth Circuit issued similar directions. The Commission has refused to obey either appellate mandate — electing, instead, to attempt to usurp forbidden jurisdictional powers. Until FPC has at least tried in good faith to perform its regulatory functions in accordance with the mandates of the two Courts of Appeals, the Commission has no basis for saying that the method of regulation directed by those Courts is "ineffective."

The determinative question here is not what the Commission thinks it should do but what Congress says it can do. *Civil Aeronautics Board* v. *Delta Air Lines*, 367 U.S.

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[28] Two Courts of Appeals have unanimously so ruled in this case. Two of the five members of the Commission were similarly persuaded. This case is here, therefore, because a bare majority of three Commission members tried to expand their powers far beyond permissible statutory limits.

316, 322 (1961). This Court rejected these same arguments about regulatory necessity and jurisdictional "gap" in the *Panhandle* case. Extending a regulatory statute is not warranted simply because experience may disclose it should have been made more comprehensive: "The natural meaning of words cannot be displaced by reference to difficulties in administration." *Addison* v. *Holly Hill Fruit Products*, 322 U.S. 607, 617 (1944). As held by this Court in *Panhandle*, the Commission's only recourse, if it wishes added power to regulate transfers of leases, is to obtain that authority from Congress (337 U.S. at 515). To the same effect, *Border Pipe Line Co.* v. *FPC*, 171 F. 2d 149, 152 (D.C. Cir. 1948).

The extensive, uncontroverted evidence in the record of this case shows that Texas Eastern's acquisition costs were "in line" and in the public interest. Ownership of the Rayne Field leases not only provides Texas Eastern with gas at a lower price than it would have had to pay for gas from any other source, but enables Texas Eastern to avoid gas price escalations and "favored nation" clause triggering and to operate more efficiently and at lower expense.

Texas Eastern's purchase of the Rayne Field leases was a prudent investment and fully consonant with the public convenience and necessity. No additional regulatory authority is needed by the Commission to protect consumers in this instance. The record here furnishes no ground for judicial sanction of the Commission's attempted seizure of jurisdictional powers Congress has deliberately withheld and declined to bestow.

ARGUMENT

I.

The Commission has no jurisdiction over the conveyance of leasehold interests involved in this case

A. This Court's decision in *Panhandle* is controlling

Assertion in this case of jurisdiction over Assignors' sale of their Rayne Field leases represented the Commission's second attempt to expand its regulatory authority into the same forbidden area. The first such attempt was brought to a halt by this Court's landmark decision in *Federal Power Commission* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498 (1949), affirming 172 F. 2d 57. That decision is controlling here.

In *Panhandle*, this Court was concerned with: ". . . a problem involving the scope of the power over the gas reserves of a natural-gas company given to the Federal Power Commission by the Natural Gas Act." (337 U.S. at 499). And this Court concluded that the sale of leaseholds by a natural-gas company was not a sale of natural gas in interstate commerce subject to the jurisdiction of the Commission, but was an "activity related to the production and gathering of natural gas and beyond the coverage of the Act." (at 515).

In arriving at that conclusion, this Court noted that "the Natural Gas Act did not envisage Federal regulation of the entire natural-gas field to the limit of constitutional power" (at 502).[29] This Court then ruled that transfers of lease-

[29] In 1961, some twelve years later, this Court similarly observed, in *FPC* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1, 18, that "Congress, in enacting the Natural Gas Act, did not give the Commission comprehensive powers over every incident of gas production, transportation and sale. Rather, Congress was 'meticulous' only to invest the Commission with authority over certain aspects of this field, leaving the residue for state regulation. *Panhandle Eastern Pipe Line Co.* v. *Public Service Com.*, 332 U.S. 507."

hold interests by natural-gas companies fall within the exemption applicable to "production" in Section 1(b) of the Act (at 503-504). Continuing, this Court said (at 504-505, footnotes omitted):

> "The Commission seeks to distinguish between the activities of production and gathering, such as drilling, spacing wells, or collecting gas, and the facilities such as reserves and gas leases, used therefor and argues that only the former were excluded from the coverage of the Act .... In the face of the unambiguous language of the Act and its legislative background, we cannot ascribe such a narrow meaning to the words, 'the production or gathering of natural gas.' In *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U.S. 581, 603, we said that this phrase comprehended the producing properties and gathering facilities of a natural-gas company. *We now adhere to this natural and clear meaning of the words and their obvious expression of congressional intent. Of course leases are an essential part of production.*"

This Court went on to reject the Commission's contentions that it was vested with jurisdiction over transfers of leases by Sections 4, 5 and 7 of the Act, because to accept those arguments "would establish wide control by the Federal Power Commission over the production and gathering of gas"; *"would invite expansion of power into other phases of the forbidden area"*; and "would be an assumption of powers specifically denied the Commission by the words of the Act as explained in the report and on the floor in both Houses of Congress." (at 509).

This Court further noted that, while trading in gas leases was common practice in the industry, the Commission had not previously "claimed the right to regulate dealings in gas acreage," indicating "that the Commission did not believe the power existed" (at 513). "In the light of that

history we should not by an extravagant, even if abstractly possible, mode of interpretation push powers granted over transportation and rates so as to include production .... We cannot attribute to Congress the intent to grant such far-reaching powers as implicit in the Act when that body has endeavored to be precise and explicit in defining the limits to the exercise of federal power" (at 513-514).

During the 16 years since *Panhandle* was decided, its authority has never been dimmed or doubted. On the contrary, *Panhandle* has been consistently cited with approval and followed on the point that FPC lacks jurisdiction over dealings in gas leases and gas acreage.[30] Thus, in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), on which petitioners place such heavy reliance, the *Panhandle* case was cited approvingly by this Court for the exact proposition that FPC jurisdiction does not extend to producing properties:

> "In *Federal Power Com.* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. 498, 505, we observed that the 'natural and clear meaning' of the phrase 'production or gathering of natural gas' is that it encompasses '*the producing properties* and gathering facilities of a natural-gas company.'" (347 U.S. at 678)

And in the case at bar, the Courts of Appeals for both the D. C. Circuit and the Fifth Circuit have faithfully followed and applied that *Panhandle* doctrine. *PSC* v. *FPC*, 287 F.

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[30] See, e.g., *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 678 (1954); *Saturn Oil & Gas Co.* v. *FPC*, 250 F. 2d 61, 68 (10th Cir. 1957), *cert. den.* 355 U.S. 956; *Continental Oil Co.* v. *FPC*, 266 F. 2d 208, 210 (5th Cir. 1959), *cert. den.* 361 U.S. 827; *Public Service Comm.* v. *FPC*, 287 F. 2d 143, 145 (D.C. Cir. 1960); *Pan American Petroleum Co.* v. *FPC*, 339 F. 2d 694, 695, 696 (10th Cir. 1964); *Kansas-Nebraska N. Gas Co.* v. *State Corp. Comm.*, 169 Kan. 722, 222 P. 2d 704, 710 (1950); *Emerald Coal & Coke Co.* v. *Equitable Gas Co.*, 378 Pa. 591, 107 A. 2d 734, 737 (1954).

2d 143, 145 (1960); *Marr v. FPC*, 336 F. 2d 320, 323-324, 326 (1964). More recently, the Tenth Circuit has also been constrained to do the same thing. *Pan American Petroleum Co. v. FPC*, 339 F. 2d 694, 695, 696 (1964).

Up to February 6, 1963, the Commission itself had likewise consistently recognized that *Panhandle* conclusively established FPC's lack of jurisdiction over transfers of leasehold interests in gas reserves.[31] Perhaps the strongest indication of the absence of jurisdiction in this area is to be found in FPC's annual pleas to Congress for amendment of the Natural Gas Act so as to confer upon FPC this very authority. At the conclusion of its opinion in *Panhandle*, this Court told the Commission what it should do if it wished to obtain additional authority respecting lease transfers (337 U.S. at 515-516):

> "If the Commission is of the opinion that it should have the power to control the disposition of leases by natural-gas companies, it is authorized to call the attention of Congress to that fact."

The Commission took this advice to heart and requested amendatory legislation for twelve years in a row; but Congress took no action. As Commissioner Woodward pointed out in his dissent in our case (30 FPC at 157; R. 1231):

> "In its annual reports to Congress for the past twelve years, the Commission has advocated an amend- to Section 7 of the Natural Gas Act which would vest

[31] In its Annual Report to Congress for 1949, the Commission set forth its understanding of *Panhandle* with great clarity (29 FPC Ann. Rep. at 136): "The Supreme Court in affirming the action of both the district court and the Court of Appeals for the Third Circuit *ruled that the disposition of gas reserves and the transfer of gas leases are intimately related to the production and gathering of natural gas, control over which is specifically denied to the Commission by section 1(b) of the act.*" This was also the thesis of the Commission's 1960 brief to the D.C. Court of Appeals in our case (R. 1201).

it with jurisdiction over transfer of leaseholds by natural gas companies. [Citing FPC's Annual Reports for the years 1951 through 1962] In spite of these pleas in each instance the Congress has not acted to confer upon this Commission the power which, clearly, it does not presently possess."[32]

In the same vein, the Court below found it "significant that annually for the past twelve years the Commission has unsuccessfully asked Congress to grant it jurisdiction over the transfer of leaseholds by natural-gas companies" (336 F. 2d at 324; R. 1285).

The fact that FPC sought this added authority from Congress strongly indicates that such requested power had never actually been conferred. *Federal Trade Commission* v. *Bunte Bros.*, 312 U.S. 349, 352 (1941). Great weight must be given to an agency's consistent interpretation of the law it administers, especially where the agency has sought to have the law amended but Congress has declined to do so and has thereby acquiesced in the agency's historical interpretation. *United States* v. *Bergh*, 352 U.S. 40, 46-47 (1956); *Gas Service Co.* v. *FPC*, 282 F. 2d 496, 499 (D.C. Cir. 1960); *Mississippi Valley Gas Co.* v. *FPC*, 294 F. 2d 588, 592 (5th Cir. 1961).

Apparent are the reasons why Congress has been reluctant to endow the Commission with authority to regulate lease transfers. As this Court cautioned in *Panhandle*, such authority "would establish wide control by the Federal

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[32] It should be noted that the Commission omitted any request for this added authority in its Annual Report for 1963 (See 43 FPC Ann. Rep. at 2-3). Instead, it boasted that it had gained that authority by its ruling in Opinion No. 378 in the case at bar, which ruling was described as "*A major policy decision*" (*Id.* at 16). In its Annual Report for 1964, however, the Commission again asked that Section 7 of the Act be amended so as to nullify the effect of *Panhandle* (44 FPC Ann. Rep. at 7).

Power Commission over the production and gathering of gas" and "would invite expansion of power into other phases of the forbidden area " (337 U.S. at 509).[33]

Opinions No. 378 and No. 378-A in our case show how far the Commission would go — if it could: FPC would dictate, revise or nullify the terms of any conveyance of mineral interests in any property from which natural gas has been, or ever may be, produced and sold in interstate commerce for resale for ultimate public consumption.[34] This would cloud the title to countless mineral properties, whether such titles were based on wills, deeds, leases or other instruments of conveyance; and such clouded titles would be created by edict (or by mere threat) of a federal administrative agency, notwithstanding that real property titles and interests are of peculiar local concern to the respective States. Such clouding of titles (and therefore diminishment of real estate values) could be visited upon

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[33] The Third Circuit Court of Appeals' warning in *Panhandle* was somewhat more graphic: If FPC got its way, a natural gas company "could never sell an outworn truck or an obsolete drilling machine without getting Commission approval. It would, likewise, be compelled to take to the Commission every proposed transfer of a ten acre gas lease in exchange for another, no matter how obviously desirable the transfer might be . . . . In other words, by this process, it seems to us, the Commission will have taken over the area of regulation of facilities for gas production which by express terms of section 1 of the statute were to be excluded from Commission regulation" (172 F. 2d at 61).

[34] Be it recalled that the Rayne Field was not connected to any interstate pipeline, nor was any gas from Rayne transported or sold in interstate commerce, until the month following consummation of the conveyance of leases (R. 450, 721, 722, 885, 906, 908, 1187). Yet, in FPC's view, transportation and sale of natural gas in interstate commerce, *subsequent to conveyance of mineral interests in productive properties*, will suffice to empower the Commission to force retroactive rescission or revision of the terms of such conveyance (R. 978-981, 1228).

unexplored "wildcat" acreage, as well as upon properties whose gas producing potential had been "proven" by exploratory or development drilling.[35]

If the Commission possessed this authority, it could regulate the entire exploration and production end of the petroleum industry; it could deprive landowners of valuable property rights; it could amerce large oil and gas producers and bankrupt small ones.

Beyond cavil, Congress never intended that the Natural Gas Act should endow FPC with such awesome powers or make possible such chaotic and dire consequences. Just as clearly, Congress has steadfastly refused the Commission's repeated pleas for such powers, because to do so would open wide a veritable Pandora's box.

B. There are no valid "distinctions" between *Panhandle* and the case at bar

Petitioners attempt to avoid application of the *Panhandle* doctrine to the instant case by conjuring up various "distinctions." Essentially, these asserted "distinctions" boil down to three: (1) that the gas reserves underlying the leases transferred in *Panhandle* were "undeveloped," whereas the Rayne Field gas reserves were "proven" and "developed"; (2) that the gas to be produced from the lands involved in *Panhandle* was to be transported and sold intrastate, while the Rayne gas was to be transported and sold in interstate commerce; and (3) that the issues decided in

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[35] FPC casually asserts in footnote 13 on page 21 of its brief that it "has had no occasion to decide whether it would have jurisdiction over a sale of leases where anticipated reserves have not been proven or developed"; hence FPC elects to "put that question to one side." In so doing, however, FPC forgets that the leases involved in *Panhandle* were "proven," although not fully "developed" (337 U.S. at 499, 500, 515, 519).

Panhandle differ from those presented here. Each of these three "distinctions" is fallacious and futile.

(1) As to the extent to which the conveyed leases were "proven," "undeveloped" or "developed"

The natural gas reserves involved in *Panhandle* were sufficiently "proven" to permit an informed estimate of their volume, to wit: approximately 700 billion cubic feet, which represented about 12% of the total gas reserves owned by the Panhandle company (337 U.S. at 499, 500).[36] And while the reserves there in question were described as "undeveloped" (337 U.S. at 500, 515), that simply meant they had not been fully drilled. As was pointed out by Mr. Justice Black in his dissenting opinion, the Panhandle company had "already received from its customers *large sums of money* from rates which reflected expenses incurred in maintaining these reserves and *for exploration and development costs* in relation to them" (337 U.S. at 519).

In our case, the Rayne Field gas reserves were likewise "proven" in the sense that their volume could be estimated (R. 25, 163, 745, 1186). Although these reserves had been substantially "developed" by 19 wells drilled on the lands prior to the time of the leasehold conveyance to Texas Eastern, such "development" had by no means been completed: at least 7 more wells were required to be drilled thereafter (R. 485-486, 493-494, 536-537; Ex. X-2, R. 747-748; Ex. X-5, R. 753).

When, therefore, petitioners seek to "distinguish" *Panhandle* by characterizing the reserves there in question as "undeveloped" and those here in question as "proven" and

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[36] Panhandle Eastern Pipe Line Co. held leases on properties capable of yielding a total of some 6 trillion cubic feet of natural gas (172 F. 2d at 58).

"developed," petitioners are simply pasting on deceptive labels.[37]

Petitioners contend that a conveyance of leasehold interests in known gas reserves may occasionally be treated as a "sale of natural gas in interstate commerce for resale". However, they do not (because they cannot) explain how the question of whether or not it is such a sale can conceivably depend upon any such limp criterion as the number of wells that happen to have been drilled on the properties at the time of conveyance. If that were the test, when would a gas deposit become sufficiently "proven" to transform a conveyance of leasehold interests therein into a "sale of natural gas"? When gas is first discovered on adjacent lands? When the discovery well is brought in on the leased acreage? When one, three, or seven development wells are completed? Or when the last dry hole is plugged and abandoned?

(2) As to the lease purchaser's intent and subsequent conduct respecting disposition of gas produced from the properties

Petitioners second "distinction" of *Panhandle* is founded on the false assumption that "the gas to be produced from Panhandle's transferred leases was *in no event* intended for resale 'in interstate commerce,' but was to be consumed within the producing State" (FPC Br. p. 16); that Hugoton (the company which acquired the leases in *Panhandle*) "was

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[37] Throughout their briefs, petitioners similarly seek to create another erroneous impression by labeling the Assignors as "producers." FPC itself decried the use of this misleading device in its 1960 brief to the D.C. Court of Appeals: "We use 'assignors' for the sake of clarity. PSC refers to the companies as 'producers' . . . As regards Rayne field they might fairly be characterized the 'developers'; but they will not produce the gas whose cost is the bone of contention in this case." (R. 1185)

bound by contract to develop the leases and sell the gas therefrom *entirely* in the intrastate market in Kansas" (UGI Br. p. 25).

The actual facts, as related in this Court's *Panhandle* opinion (337 U.S. at 499-501, 507), were these: The interstate pipeline (Panhandle) transferred to Hugoton gas leases on approximately 97,000 acres of land in Kansas. This acreage covered an estimated 700 billion cubic feet of gas reserves, representing 12% of all such reserves owned by Panhandle. Prior to the lease transfer, Panhandle had, in support of three applications for FPC certification of additional pipeline facilities, included this same acreage as part of its (Panhandle's) reserves, and the Commission had issued such certificates upon finding that Panhandle had adequate reserves to warrant its expansion. Moreover, Panhandle had included these same reserves in its rate base as "used and useful property." Upon transferring the leases to Hugoton, Panhandle received, as part of the return, *"the option to purchase on and after January 1, 1965, all or part of the gas produced from this land."* It was not until *after* the leases were transferred that Hugoton contracted to sell the gas produced from those leases for intrastate consumption; *and such contract had a limited life of only 15 years.*

In the light of these facts, it is apparent that, contrary to petitioners' assertions, gas produced from the leases involved in *Panhandle* was "intended" for interstate transportation both before and after the leases were transferred, and that commitment of such gas to intrastate consumption was for a limited period only.

In our case, "intent" as to the destination of the Rayne gas rested with the purchaser of the leases, Texas Eastern. But neither the intent of Texas Eastern nor its conduct

after acquiring the leases, can transform the Assignors' sale of interests in real property located wholly within the State of Louisiana into a sale of the commodity, natural gas, "in interstate commerce for resale."

(3) As to the issue presented and decided in *Panhandle*

Petitioners assume that *Panhandle* presented an extremely narrow question.[38] This Court, however, stated at the outset of its opinion that it was disposing of a broad and basic problem, namely: "the scope of the power over the gas reserves of a natural-gas company given to the Federal Power Commission by the Natural Gas Act" (337 U.S. at 499). This Court's resolution of that problem was equally fundamental: The Act "expressly exempts from its coverage . . . the production and gathering of natural gas"; and such exemption embraces "the facilities, such as reserves and gas leases" used for production (at 504). "Of course leases are an essential part of production" (at 505). "[T]he transfer of undeveloped gas leases is an activity related to the production and gathering of natural gas and beyond the coverage of the Act" (at 515).

Having postulated quite a different main issue from the one actually considered and decided by this Court, petitioners easily devise numerous fine "distinctions" between

[38] FPC insists that the main question in *Panhandle* was "whether, without Commission approval, an interstate pipeline could make any disposition whatever of leases which had been included in its rate base and relied on to support its applications for certificates of public convenience and necessity" (FPC Br. p. 34). UGI avers that the controversy in *Panhandle* "turned upon the extent of the Commission's authority to go beyond its certificating and rate-making function and to interfere with the management decisions of Panhandle dealing with its property, where such dealing might have a significant indirect effect upon those Commission functions, even though the transaction complained of was not a sale of gas in interstate commerce for resale." (UGI Br. p. 25)

Panhandle and the case at bar. Starting with a false major premise, petitioners inevitably arrive at false conclusions.

C. The *Phillips* case in no way modified the doctrine of *Panhandle*

There is one crucial distinction between the *Panhandle* decision and the determination of this Court in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954): *Panhandle* dealt with the scope of FPC jurisdiction over conveyance of leasehold interests in land, while *Phillips* concerned the scope of FPC jurisdiction over contractual sales of the commodity, natural gas, *after it had been extracted from the land*. This fundamental distinction goes to the heart of the present controversy, because here we face the self-same issue that was resolved in *Panhandle* and not the issue determined in *Phillips*.

In deciding *Phillips*, this Court in no way modified *Panhandle*. On the contrary, *Phillips* cited *Panhandle* approvingly for the precise proposition that "the 'natural and clear meaning' of the phrase 'production or gathering of natural gas' is that it encompasses *'the producing properties* and gathering facilities of a natural-gas company'" (347 U.S. at 678).

The basic distinction between *Panhandle* and *Phillips* was clearly pointed out in both of the Courts of Appeals opinions rendered in the case at bar. Thus, in *PSC* v. *FPC*, 287 F. 2d 143, the D.C. Circuit observed:

> "Sales of natural gas by an independent producer are subject to regulation under Sections 4 and 5 of the Natural Gas Act. [citing *Phillips*] But the Commission has been held to lack jurisdiction over gas leases. [citing *Panhandle*]." (287 F. 2d at 145; R. 864)

And the Fifth Circuit, explaining its determination now under review, said:

> "The *Panhandle* case, however, held that transfers of gas leases are exempt as an activity related to production and gathering. The Court in *Phillips* expressly recognized this holding [347 U.S. at 687], but was there able to find jurisdiction because 'production and gathering, in the sense that those terms are used in § 1(b), end before the sales by Phillips occur.' [Ibid.]." (336 F. 2d at 325; R. 1287)

Petitioners' heavy reliance on *Phillips* is, therefore, obviously misplaced.

II.

The conveyance of leasehold interests involved in this case was neither a "sale of natural gas" nor a sale "in interstate commerce," and therefore was not within the affirmative authority delegated to the Commission under the Act

Congress carefully limited the regulatory scope of the Natural Gas Act. "Three things and three only Congress drew within its own regulatory power, delegated by the Act to its agent, the Federal Power Commission. These were: (1) the transportation of natural gas in interstate commerce; (2) its sale in interstate commerce for resale; and (3) natural gas companies engaged in such transportation or sale." *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission*, 332 U.S. 507, 516 (1947). Thus, FPC's jurisdiction was precisely circumscribed by the affirmative grant of regulatory authority in Section 1(b), as well as by the specified exemptions.[39]

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[39] Such exemptions included "any other transportation or sale of natural gas" and "the production or gathering of natural gas." These exemptions, however, were "not actually necessary, as the matters specified therein could not be said fairly to be covered

To fall within the ambit of FPC's regulatory powers under the Act, a transaction must entail a "sale of natural gas" and such sale must be "in interstate commerce." The transaction here under review met neither of these jurisdictional prerequisites. It follows that the Commission lacked any authority whatever to regulate the Assignors' conveyance of their Rayne Field leasehold interests.

A. The conveyance of Rayne Field leasehold interests was not a "sale of natural gas"

The Natural Gas Act is concerned solely with "natural gas" when it is in the form of *a commodity* that can be transported and sold "in interstate commerce." Section 2(5) of the Act defines "natural gas" to mean "either natural gas unmixed, or any mixture of natural and artificial gas." The stuff so defined can only be a vaporous substance (natural gas) which has previously been extracted from a subterranean reservoir and thereby converted into a commodity capable of admixture with a similar vaporous substance (artificial gas).[40]

Section 2(7) of the Act defines "interstate commerce" as including "commerce between any point in a State and any point outside thereof." Only a commodity — e.g., natu-

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by the language affirmatively stating the jurisdiction of the Commission . . . HR Rep. No. 709, 75th Cong. 1st Sess. p. 3." *FPC* v. *Panhandle Eastern Pipe Line Co.*, 337 U.S. at 504, footnote 5.

As noted in footnote 16 to the *Panhandle* opinion (337 U.S. at 512), another bill before Congress would have made the Act apply to "the procurement of natural gas" for transmission and sale in interstate commerce. But that bill failed of adoption; instead Congress enacted Sec. 1(b).

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[40] Before natural gas is produced, it remains imbedded in strata of porous rock deep in the earth's crust. There is no way to mix natural gas in that state of its existence with "artificial" gas manufactured above ground out of coal or oil.

ral gas *after* its extraction from its original habitat — can be moved from place to place in commerce.

This Court has heretofore twice taken note of the fact that natural gas does not become a commodity, and therefore a subject of commerce, until it has been brought to the surface and reduced to possession. *West* v. *Kansas Natural Gas Co.*, 221 U.S. 229 (1911); *Pennsylvania* v. *West Virginia*, 262 U.S. 553 (1923). In the first of those cases, this Court said (221 U.S. at 255):

> "Gas, when reduced to possession, is a commodity; it belongs to the owner of the land; and, when reduced to possession, is his individual property, subject to sale by him, and may be a subject of intrastate commerce and interstate commerce."

And in the second case cited this Court said further (262 U.S. at 586):

> "Natural gas is found at pronounced depths in porous strata — usually sand rock — constituting a natural reservoir, and is brought to the surface and reduced to possession through wells drilled into the containing strata. When a surface owner thus reduces it to possession he becomes its owner and it becomes a subject of commerce, like any other product of the forest, field or mine."[41]

The fact that Assignors actually sold leasehold interests, and not a commodity, appears on the face of the Assigment

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[41] In other words, the difference between realty and a commodity is fundamental. A standing forest is not felled timber, a farm is not reaped wheat, a mountain is not mined ore and mineral acreage is not produced oil or gas. Clearly, an oil and gas lease represents an interest in land; and when oil or gas is produced, it is just as clear personal property. I Williams & Meyers, Oil & Gas Law (1964 ed.), § 212, pp. 120, 122.

and Conveyance of July 27, 1959 (R. 184).[42] By that instrument, as the Commission itself represented to the D.C. Court of Appeals: "The assignors would wholly alienate their rights to produce natural gas" (R. 1188). And the Court below so found and held: "The assignors retained no operating rights" (336 F. 2d at 324; R. 1286).

When, therefore, the Assignors conveyed their leasehold interests in the Rayne Field, Assignors did not sell the commodity, natural gas.[43] At that time, the hydrocarbon substances beneath the leased properties lay buried in strata some two miles or more below the earth's surface, where those substances had been formed and accumulated millions of years before. *Such hydrocarbons were then a part of the realty;* they had not yet been brought to the surface and reduced to possession.[44] Hence, they were not then a commodity capable of transportation and sale in commerce.

It follows inescapably that the transaction of July 27, 1959, between the Assignors and Texas Eastern was not, and could not be, a "sale of natural gas" over which the Commission possesses regulatory authority.

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[42] To appreciate the complete difference between a conveyance of leasehold rights and interests and a sale of natural gas after its production, compare the Assignment and Conveyance (R. 184 *et seq.*) with one of the abortive gas sales contracts proposed by the parties in 1957 (Ex. 3-f, R. 99 *et seq.*). The latter, typical of the contracts employed for the purpose in the industry, is replete with terms, conditions and provisions wholly foreign to a conveyance of leasehold interests.

[43] FPC expressly so found in its Opinion No. 322, based on the identical Assignment and Conveyance that is now before this Court: "the purchase of the leases is not a contract to purchase gas" (21 FPC at 867; R. 462).

[44] Texas Eastern did not begin to move any of its gas from the Rayne Field until August 1959 (R. 721, 906, 908). Production of that gas is expected to continue over a period of 31 years, until 1989 (R. 535; Ex. X-5, R. 752). A substantial volume of the gas in place will remain in the reservoirs when the field is ultimately abandoned (R. 693; Ex. X-2, R. 745).

B. The conveyance of Rayne Field leasehold interests was not a sale "in interstate commerce"

Not only was the Rayne Field lease conveyance beyond the sphere of the Commission's regulatory powers because there was no sale of "natural gas," but also because such conveyance was not a sale "in interstate commerce." It is a physical impossiblity to sell in commerce, interstate or otherwise, real property rights in rock formations deep down in the bowels of the earth. As Commissioner Woodward pointed out so succinctly in his dissenting opinion (R. 1232-1233):

> "The leasehold sale was not a sale in interstate commerce; it affected only rights and interests in real property located wholly within the State of Louisiana."

To express the limited nature of the authority delegated to the Commission, Congress employed in Section 1(b) of the Act the restrictive phrase, "sales of natural gas *in* interstate commerce for resale." This Court has frequently held that a federal statute which applies solely to matters "*in* interstate commerce" is far narrower than one which applies broadly to matters which "affect," "restrain," "burden" or "promote" such commerce.

Thus, in *Federal Trade Commission* v. *Bunte Bros., Inc.*, 312 U.S. 349 (1941), the controversy concerned the scope of Section 5 of the Federal Trade Commission Act (15 U.S.C. § 45), which makes unlawful "unfair methods of competition in commerce." Use of those words was held to limit the kinds of activities proscribed by that Act. Speaking through Mr. Justice Frankfurter, this Court concluded (312 U.S. at 355):

> "This case presents the narrow question of what Congress did, not what it could do. And we merely hold that to read 'unfair methods of competition in [interstate] commerce' as though it meant 'unfair methods of com-

petition in any way affecting interstate commerce,' requires, in view of all the relevant considerations, much clearer manifestation of intention than Congress has furnished."

See also *Polish National Alliance* v. *National Labor Relations Board*, 322 U.S. 643, 647 (1944).[45]

Several other examples of the restrictive scope accorded to enactments which apply to transactions or persons "*in* interstate commerce" can be cited.[46]

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[45] "Again, half a dozen enactments, other than the National Labor Relations Act, are sufficient to illustrate that when it [Congress] wants to bring aspects of commerce within the full sweep of its constitutional authority, it manifests its purpose by regulating not only 'commerce' but also matters which 'affect,' 'interrupt,' or 'promote' interstate commerce." (322 U.S. at 647)

[46] For example, the regulatory limits of the Robinson-Patman Act, which relates to persons "engaged *in* commerce" and who discriminate in price "*in the course of* such commerce" (15 U.S.C. § 13(a)), were pointed out in *Standard Oil Co.* v. *Federal Trade Commission*, 340 U.S. 231, 236 (1951) and *Willard Dairy Corp.* v. *National Dairy Products Corp.*, 309 F. 2d 943, 946 (6th Cir. 1962); *cert. den.* 373 U.S. 934. By way of contrast, it has been held that Sec. 1 of the Sherman Act (15 U.S.C. § 1), outlawing contracts, combinations and conspiracies "in restraint of trade or commerce," covers all restraints having a substantial effect on interstate commerce. *Mandeville Island Farms* v. *American Crystal Sugar Co.*, 334 U.S. 219, 234 (1948).

When enacted in 1908, the Federal Employers Liability Act was confined to injuries suffered by persons employed by a carrier and engaged *in* interstate commerce. This was held to exclude an employee who was injured while mining coal. *Delaware, Lackawana & W. R. Co.* v. *Yurkonis*, 238 U.S. 439, 444 (1915). The Act was amended in 1939 to apply to employees whose duties *affect* interstate commerce (45 U.S.C. § 51). This change was held to extend the Act's coverage to employees not directly engaged in interstate commerce. *Southern Pacific Co.* v. *Gileo*, 351 U.S. 493, 498-499 (1956); *Reed* v. *Pennsylvania R. Co.*, 351 U.S. 502, 504-508 (1956).

Similarly, the Fair Labor Standards Act has been construed as having restricted scope, because it applies to employees "in

Besides limiting the Commission's authority to "sales of natural gas in interstate commerce," Section 1(b) expressly exempts "any other . . . sale of natural gas." This necessarily excludes any sale of leasehold interests in lands containing natural gas deposits. While such a transaction may "affect" interstate commerce, it is by its very nature a purely local event.

The conveyance of leases in the present case was not only local in character but, since it constituted a transfer of title to mineral interests in realty, it was subject to regulation by the State of Louisiana. Each State clearly has power to, and does, regulate all transfers of titles to, and interests in, lands within its boundaries. If there were the slightest merit to petitioners' contention — that the transfer of Assignors' Rayne Field leases should be deemed a "sale of natural gas in interstate commerce"—then the states would be powerless to regulate any transfer of titles or interest in productive or potentially productive gas properties. Manifestly, Congress never imagined, let alone intended, that the Natural Gas Act would produce any such grotesque result.

C. No aspect of the parties' normal business arrangements, made in good faith, did or could convert the conveyance of leasehold interests into a sale of natural gas in interstate commerce

In its July 1960 brief to the D.C. Court of Appeals, the Commission correctly represented that this case "centers about the sale of leases. It does *not* concern a purchase of

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industries engaged *in* commerce or *in the production of goods for* commerce" (29 U.S.C. § 202). *Kirschbaum* v. *Walling*, 316 U.S. 517, 522-523 (1942); *Walling* v. *Goldblatt Bros., Inc.*, 128 F. 2d 778, 781-782 (7th Cir. 1942), cert. den. 318 U.S. 757; *Mitchell* v. *Zachry Co.*, 362 U.S. 310, 314-316 (1960).

gas in place within the underground reservoir (which Louisiana law does not recognize).[47] Nor does it involve a contract to sell gas as produced by the assignors" (R. 1185).

Since February 6, 1963, however, the Commission has insisted that black is white; that the sale of Rayne Field leases was really a "sale of natural gas in interstate commerce for resale." When the FPC's contention is stripped of ratch words and confusing argumentation,[48] it is seen

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[47] In Louisiana, a lease does not convey title to subsurface minerals or to oil or gas "in place." *Frost-Johnson Lumber Co.* v. *Salling's Heirs*, 150 La. 756, 91 So. 207, 243 (1920); *Elkins* v. *Townsend*, 296 F. 2d 172, 173 (5th Cir. 1961). By statute, oil and gas leases are classified as "real rights and incorporeal immovable property" and the owners of such leases "have the benefit of all laws relating to the owners of real rights in immovable property or real estate." La. Rev. Stat., Tit. 9, Sec. 1105. "A mineral lessee or sublessee . . . is the owner of a real right." La. Code of Civ. Proc., Art. 3664.

These property laws of Louisiana cannot be ignored. "Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state . . . . There is no federal general common law." *Erie R. Co.* v. *Tompkins*, 304 U.S. 64, 78 (1938). "Riparian water rights, like other real property rights, are determined by state law. Title to them is acquired in conformity with that law." *FPC* v. *Niagara Mohawk P. Corp.*, 347 U.S. 239, 252 (1954). "The great body of law in this country which controls acquisition, transmission, and transfer of property, and defines the rights of its owners in relation to the state or to private parties, is found in the statutes and decisions of the state. The custom of resorting to them *to give meaning and content to federal statutes* is too old and its use too diversified to permit us to say that considerations of nationwide uniformity must prevail in a particular case over our judgment that it is out of harmony with other objectives more important to the legislative purpose." *Davies Warehouse Co.* v. *Bowles*, 321 U.S. 144, 155-156 (1944). See also *Commissioner of Int. Rev.* v. *Stern*, 357 U.S. 39, 45 (1958); *United States* v. *Certain Property, etc.*, 306 F. 2d 439, 444-445 (2nd Cir. 1962).

[48] Dissenting Commissioner Woodward aptly described the FPC's assertion of jurisdiction over the sale of Rayne Field leasehold rights as based on "an unsupported, vague and obscure dissertation" (R. 1232).

to be based *entirely* on the five "features" of the transaction which were pointed to accusingly in Opinion No. 378, namely: (1) Assignors' reservation of rights in deep horizons and in crude oil and other minerals; (2) Assignors' reservation of a production payment payable out of proceeds from sales of condensate; (3) provision for acceleration of the purchase-money notes in the event of stepped-up depletion of the Rayne Field reserves; (4) the Management Agreement under which Continental was employed to operate the field as agent for Texas Eastern; and (5) direct liability of Louisiana Gas, rather than Texas Eastern, on the purchase-money notes.

These five "features" were, one and all, valid, reasonable and in no wise unusual in a transaction of the character and magnitude of the one here in controversy (see the opinion below, 336 F. 2d at 324-325; R. 1285-1287). Each such "feature" was, moreover, entirely consistent with a bona fide sale of leasehold interests.[49]

(1) *Reservation of rights* in deep, unexplored strata and in oil and other minerals did not, and could not, transmute the remaining leasehold rights conveyed by Assignors to Texas Eastern into the commodity, natural gas.[50] Such res-

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[49] In its Opinion No. 322, the Commission said: "There was no evidence or implication that the negotiations leading to the lease purchase and sale agreements were anything but arm's-length and we find that they were arrived at on the basis of arm's-length bargaining" (R. 462). Texas Eastern "negotiated the lease purchases at arm's length and in good faith" (FPC 1960 Brief, R. 1209).

[50] The reason for these reservations is divulged at page 21 of FPC's brief: "Moreover, since the purchaser [Texas Eastern] was an interstate pipeline, it is clear that its primary interest was in obtaining gas, rather than other minerals." That is precisely why Texas Eastern decided not to pay additional millions of dollars for leasehold rights in unexplored deep formations and in substances other than gas.

ervations of rights in untested deep horizons and in particular minerals are common and accepted industry practice in the conveyancing of producing leaseholds.[51]

(2) *The reservation of a production payment,* payable out of the proceeds from sales of condensate, was likewise in line with normal practice.[52] This feature of the transaction (a) relieved Texas Eastern from paying Rayne Field operating costs; (b) provided Texas Eastern with the prospect of substantial additional income after the reserved production payment is satisfied; and (c) conserved Texas Eastern's cash resources by materially reducing the aggregate purchase price.

(3) *The provision for accelerated payment of the purchase-money notes* in inverse order of maturity, in case of exceptionally high takes from the Rayne Field, was a normal business method of assuring the continuing sufficiency of Assignors' collateral security.[53] The notes were secured by mortgages on the transferred leasehold interests; and for sound business reasons Texas Eastern assumed no corporate liability for the payment of the unpaid balance of the purchase price. (See footnote 10, *ante,* p. 8). If Texas Eastern could, by stepped-up production, deplete the field in less than 16 years, the late-maturing notes would become unsecured; foreclosure of the mortgages on depleted properties would then be unavailing.

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[51] See 3 Summers, Oil and Gas (Perm. ed. 1958), 603, 614; 2 Williams & Meyers, Oil and Gas Law (1964 ed.) 269; Merrill, *The Oil and Gas Lease — Major Problems,* 4 Neb. L. Rev. 488, 528, 531 (1962).

[52] R. 83; and see: Bryan, *Overriding Royalty under Oil, Gas and Mineral Leases in Louisiana,* 29 Tul. L. Rev. 340, 349 (1954).

[53] Cf. *Joergenson* v. *Joergenson,* 28 Wash. 477, 68 Pac. 913 (1902); where the note provided for acceleration if the maker should sell or remove timber from the mortgaged premises.

There was no acceleration in the familiar sense of maturing the entire debt or hastening payment of the early notes. Payment was not "geared to production" as FPC asserts; there was no provisions for *decelerated* payments in the event of *decreased* production. Moreover, Texas Eastern's substantial down payment could in no way be "geared to production." (See R. 68-69)

(4) *The Management Agreement* was entered into for the perfectly legitimate safety and business reasons recited in its preamble, which we have heretofore quoted and discussed (*ante*, pp. 12-14, including footnotes 16 and 17). Continental acts under the Agreement simply as the agent of Texas Eastern (R. 828); and it is Texas Eastern, not Continental, who has the right to make all important operating decisions, including the right to nominate the volume of gas to be produced each month (see *ante*, pp. 13-14). Contracts of this nature are not uncommon.[54]

(5) *Interposition of Louisiana Gas Corporation* shielded Texas Eastern against direct liability (FPC Opinion No. 322, R. 459). "[T]he manner in which Texas Eastern's arrangements for the purchase of leases were consummated is not unique in the gas and oil business.[55] Texas Eastern's primary reasons for handling the arrangements through an intermediary corporation, Louisiana Gas Corporation, was so it would not have any liability for the amount of the notes on its books" (FPC Opinion No. 322, R. 462; and see supporting testimony, R. 87-88).

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[54] See 3 Summers, Oil and Gas (Perm. ed. 1958) 708.

[55] There is ample evidence to this effect in the record (R. 86-87), as FPC took pains to point out in its 1960 brief to the D.C. Court of Appeals (R. 1188, footnote 13): "[I]t is not uncommon for a mortgage to be given with the stipulation that the mortgagor shall not be personally bound beyond the value of the property so mortgaged." *Schexnailder* v. *Fontenot*, 147 La. 467, 85 So. 207, 210 (1920). See also Annotations, 17 A.L.R. at 717; 25 A.L.R. at 1487.

Thus, when these five "features" are viewed objectively, it becomes apparent that they were normal business arrangements which the parties worked out in good faith through arm's length negotiations. These "features" did not and could not convert a sale of leasehold interests in real property into a "sale of natural gas in interstate commerce for resale."

III

The decision of the Court of Appeals, D.C. Circuit, that FPC lacked jurisdiction over the conveyance of Rayne Field leases, was final and binding upon the Commission.

The Commission held in its Opinion No. 322 that it had no jurisdiction over the conveyance of Rayne Field leases (R. 456) and that "the purchase of leases is not a contract to purchase gas" (R. 462). The comprehensive brief filed by the Commission in the D.C. Circuit Court of Appeals repeatedly disclaimed such jurisdiction, because the doctrine laid down by this Court in *FPC* v. *Panhandle* was decisive on that question (R. 1182, 1183, 1184, 1195, 1198, 1200, 1201, 1205, 1212). The D. C. Circuit sustained this FPC position (*PSC* v. *FPC*, 287 F. 2d 143, 145; R. 864).[56] The Court further held:

[56] In its Annual Report to Congress for 1961 the Commission accurately described the D.C. Circuit's holding: "Where a pipeline company acquired leasehold interests in natural gas reserves rather than purchasing the gas from producers, the District of Columbia Court of Appeals *held that while the sale was 'non-jurisdictional,'* the acquisition costs are relevant matters within the Commission's jurisdiction and should be examined by the Commission" (41 FPC Ann. Rep. 18). In Opinion No. 378, the Commission admitted further that: "The reviewing court, without discussion, *agreed with the Commission on the question of jurisdiction,* but held that we should have either disclaimed approval of the price under the lease sale or should have examined the justification for the price" (R. 978).

"It is of no importance here that the transactions by which Texas Eastern proposes to acquire the gas will themselves be, by virtue of a change in form, *beyond the regulatory control of the Commission.* The pipeline construction project and the transactions by which Texas Eastern will dispose of the gas thus acquired clearly are within the Commission's jurisdiction . . . . the Commission's warrant to inquire arises by virtue of its responsibility to regulate the purchaser, *regardless of the status of the seller.*" (287 F. 2d at 146; R. 866)

The D. C. Circuit therefore remanded the case with directions that the Commission follow one of two specified "courses," neither of which pertained in any way to the question of the Commission's jurisdiction over the Assignor's sale of their leasehold interests (287 F. 2d at 146; R. 867).[57] Both at the end of its opinion and in its judgment (R. 868) the Court stated that the remand was *"for further proceedings not inconsistent with the opinion of this court."*

We submit that the decision of the D. C. Circuit, no review of which was ever sought in this Court, became final and binding upon the Commission so far as its jurisdiction in this case is concerned. We base this position both on the explicit provisions of Section 19(b) of the Natural Gas Act and on the familiar principle of "the law of the case".[58]

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[57] "The court remanded the case *with instructions* that the Commission expressly disclaim approval of the price or that it reopen the record to permit the pipeline company to establish that the acquisition costs will be consistent with the public convenience and necessity" (41 FPC Ann. Rep. 18).

[58] The Court below, having decided that the Commission lacked jurisdiction over the sale of leases, found it unnecessary to determine these questions (336 F. 2d at 326; R. 1288).

A. Under Section 19(b) of the Natural Gas Act, the D.C. Court of Appeals' judgment was "final"

Review of the Commission's Opinion No. 322 by the Court of Appeals, D.C. Circuit, was had pursuant to Section 19(b) of the Natural Gas Act (15 U.S.C. §717r (b)). The pertinent provisions are quoted *ante*, p. 3. That Section gives the Court of Appeals in which a petition for review and the record are properly filed "exclusive" jurisdiction to affirm, modify or set aside an FPC order. The Section then declares that:

> "The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, *shall be final*, subject to review by the Supreme Court of the United States upon certiorari or certification . . ."

In *City of Tacoma* v. *Taxpayers of Tacoma*, 357 U.S. 320 (1958), this Court considered identical language appearing in Section 313 (b) of the Federal Power Act (16 U.S.C. § 825l(b)), another statute administered by FPC. As to the conclusiveness of a Court of Appeals affirmance of an FPC order, this Court said (357 U.S. at 336-337):

> ". . . Congress in § 313 (b) prescribed the specific, complete and exclusive mode for judicial review of the Commission's orders . . . It there provided that any party aggrieved by the Commission's order may have judicial review . . . and that '[t]he judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission *shall be final*, subject to review by the Supreme Court of the United States . . .' (Emphasis added). *It thereby necessarily precluded de novo litigation between the parties of all issues inhering in the controversy* and all other modes of judicial review . . . . For Congress, acting within its powers, has declared that the Court of Appeals shall have 'exclusive jurisdiction' to review

such orders, and that its judgment 'shall be final', subject to review by this Court upon certiorari or certification. Such statutory finality need not be labeled res judicata, estoppel, collateral estoppel, waiver or the like either by Congress or the courts."[59]

In the case at bar, the question of FPC's jurisdiction over the Rayne Field lease sale was an issue inhering in the controversy resolved by the D. C. Court of Appeals' judgment. The Court clearly held that such jurisdiction was lacking.[60] There having been no review in this Court of the D. C. Circuit's judgment, it became "final" as dictated by Section 19(b). Accordingly, the Commission was forever after precluded from determining the jurisdictional question in this case in a way contrary to the appellate court's judgment.

B. The D. C. Court of Appeals' mandate to the Commission established the law of this case.

As we have seen, the D. C. Court of Appeals did three things: (1) it held that FPC lacked jurisdiction over the conveyance of Rayne Field leasehold interests; (2) it instructed the Commission to follow one of two "courses" — either disclaim approval of the price Texas Eastern paid for the leases, or permit Texas Eastern to justify that price; and (3) it remanded the case to the Commission "for further proceedings not inconsistent with the opinion of this court" (287 F. 2d at 145, 146; R. 864, 867, 868). The mandate of the

[59] The italicized words "shall be final" were so emphasized by the Court.

[60] Not only did the Court expressly so hold, but it sent the case back to the Commission with instructions to follow one of two "courses", neither of which in any way involved the jurisdictional question. If there had been a possible third alternative — i.e., assertion of jurisdiction over the Assignors because they had sold gas in interstate commerce — the Court would have been bound to include that third alternative in its mandate.

D. C. Court of Appeals accordingly established what is known as "the law of the case".

The rule of "the law of the case" — that an inferior tribunal has no power or authority to deviate from the mandate issued by an appellate court — has been universally followed for over a century.[61] Whatever was before the appellate court and disposed of by its decree is considered as finally settled; the inferior tribunal is bound by that decree and must carry it into execution; the inferior tribunal cannot vary the decree, review it even for apparent error, or give any other or further relief.[62] The upper court's mandate is completely controlling as to all matters within its compass; since the appellate judgment concludes the parties as to all issues which were or could have been decided on appeal, such judgment puts all those issues out of the reach of the inferior tribunal on remand of the case.[63] The pronouncements of the reviewing court become the rules which thereafter govern the dispute at hand; and the inferior arbiter must obey "the law of the case" even when the inferior arbiter finds itself in well founded disagreement with its reviewer.[64]

Upon remand of a case with instructions to inquire into specified matters, the inferior tribunal has nothing before it except those particular matters and may determine them

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[61] *Briggs* v. *Pennsylvania R. Co.*, 334 U.S. 304, 306 (1948).

[62] *Sibbald* v. *United States*, 12 Peters 488, 492 (1838); *Re Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895); *Re Potts*, 166 U.S. 263, 265 (1897); *Illinois ex rel. Hunt* v. *Illinois C. R. Co.*, 184 U.S. 77, 91 (1902).

[63] *Thornton* v. *Carter*, 109 F. 2d 316, 320 (8th Cir. 1940); *Paull* v. *Archer-Daniels-Midland Co.*, 313 F. 2d 612, 617 (8th Cir. 1963).

[64] *Morand Bros. Beverage Co.* v. *National Labor Relations Board*, 204 F. 2d 529, 532 (7th Cir. 1953); cert. den. 346 U.S. 909; rehearing den. 346 U.S. 940.

"and nothing more".[65] The inferior tribunal is, of course, foreclosed from making any determination which contravenes the appellate court's decision.[66] The lower tribunal is then without power to do anything contrary to either the letter or spirit of the mandate construed in the light of the appellate court's opinion.[67]

The opinion delivered by the appellate court upon rendering its decree may be consulted to ascertain what was intended by its mandate.[68] And a remand "for further proceedings not inconsistent with the opinion of this court," or words to that effect, operates to make the opinion a part of the mandate as though set forth therein at length.[69]

The rule of "the law of the case" applies to remands to federal administrative agencies just as it does to remands to lower federal courts.[70]

Sound judicial policy dictates adherence to "the law of the case," as this Court explained in *International Union* v. *Eagle-Picher M. & S. Co.*, 325 U. S. 335 (1945):

> "Finality to litigation is an end to be desired as well in proceedings to which an administrative body

[65] *Illinois ex rel. Hunt* v. *Illinois C. R. Co.*, 184 U.S. 77, 92 (1902).

[66] *United States* v. *Haley*, 371 U.S. 18, 19-20 (1962).

[67] *Thornton* v. *Carter*, 109 F. 2d 316, 320 (8th Cir. 1940); *Paull* v. *Archer-Daniels-Midland Co.*, 313 F. 2d 612, 617 (8th Cir. 1963).

[68] *Re Sanford Fork & Tool Co.*, 160 U.S. 247, 256 (1895); *Re Potts*, 166 U.S. 263, 266 (1897).

[69] *Gulf Refining Co.* v. *United States*, 269 U.S. 125, 135 (1925); *Bailey* v. *Henslee*, 309 F. 2d 840, 843 (8th Cir. 1962).

[70] *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 140 (1940); *International Union* v. *Eagle-Picher M. & S. Co.*, 325 U.S. 335, 339-341 (1945); *Morand Bros. Beverage Co.* v. *National Labor Relations Board*, 204 F. 2d 529, 532 (7th Cir. 1953); cert. den. 346 U.S. 909; rehearing den. 346 U.S. 940.

is a party as in exclusively private litigation. The party adverse to the administrative body is entitled to rely on the conclusiveness of a decree entered by a court to the same extent that other litigants may rely on judgments for or against them." (325 U.S. at 340)

"Administrative flexibility and judicial certainty are not contradictory; there must be an end to disputes which arise between administrative bodies and those over whom they have jurisdiction." (325 U.S. at 341)[71]

Similar policy considerations are thoughtfully explained in *Morand Bros. Beverage Co.* v. *National Labor Relations Board*, 204 F. 2d 529, 532 (7th Cir. 1953); cert. den. 346 U.S. 909; rehearing den. 346 U.S. 940 (which involved a situation closely parallel with that in our case) and in *Kaku Nagano* v. *Brownell*, 212 F. 2d 262, 263 (7th Cir. 1954).

We conclude that the rule of "the law of the case" is clearly applicable here.[72] That being so, the Commission was confined, after the remand from the D. C. Court of Appeals, to the two "courses" prescribed in the Court's opinion and was foreclosed from determining the jurisdictional question in this case in a manner diametrically

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[71] *A fortiori*, there must be an immediate end to disputes between administrative agencies and those over whom they have *no* jurisdiction.

[72] In our case, the evidence bearing on FPC's jurisdictional authority following remand was the same as the evidence in the record reviewed by the D.C. Court of Appeals. The rule of "the law of the case" cannot, therefore, be avoided by claiming that new and different evidence was adduced after the remand. See *Kaku Nagano* v. *Brownell*, 212 F. 2d 262, 263 (7th Cir. 1954). Nor can anything be made out of the fact that the Assignors were not parties to the D.C. Circuit review proceeding. The Commission was there, and the Court's holding on the jurisdictional question was binding on the Commission. That is sufficient, so far as "the law of the case" is concerned, especially when, as in our controversy, the outcome depends solely on the construction of contracts. *Zdanok* v. *Glidden Co.*, 327 F. 2d 944, 953 (2nd Cir. 1964); cert. den. 377 U.S. 934.

opposite to the Court's explicit holding that FPC lacked jurisdiction over the conveyance of the Rayne Field leasehold interests. As Commissioner Woodward so forcefully expressed it:

> "In my judgment, that opinion [*PSC* v. *FPC*, 287 F. 2d 143] conclusively settled the jurisdictional question. The leasehold sale was not a sale in interstate commerce .... Any other conclusion disparages the Court of Appeals adjudication — this fact is indisputable. *If permitted, this Commission's course of action would destroy the rights of parties to court review and render the decision of the courts meaningless.*" (R. 1232-1233).

IV

Lack of jurisdiction over conveyances of leasehold interests neither frustrates effective FPC regulation nor creates a regulatory "gap"

The Commission contends that, if allowed to stand, the decision of the Court below "would provide a simple mechanism for avoiding effective regulation" and thereby create a "gap" in FPC's regulatory system (FPC Br. pp. 17, 36-38).[78] This whole argument is fruitless because: (a) the Commission *does* have ample authority to regulate effectively pipeline acquisitions of leasehold interests in gas reserves; (b) any additional powers the Commission desires in this area can only be granted by Congress; and (c) the record in the instant case established that the Commission has no real need for additional authority, since Texas Eastern's investment in the Rayne Field leases was in all respects prudent and in the public interest.

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[78] UGI is hardly in a position to join in this contention. Not only did it offer no objection to Texas Eastern's acquisition of the Rayne Field leases (R. 22-23), but UGI argued that the Commission didn't need to assert jurisdiction over the transaction "to effectively control the situation" (R. 727).

A. The Commission has ample authority to regulate effectively pipeline acquisitions of leasehold interests in gas reserves

The Commission can effectively protect gas consumers by regulating the pipeline *purchaser* of leases covering gas reserves rather than by regulating the *seller*. FPC has ample authority to inquire into the pipeline's acquisition costs and to decide whether or not they were prudent; and if such costs are found to have been improvidently excessive, the Commission can prevent the excess from being passed on to gas consumers.

It is abundantly clear that FPC can perform its regulatory functions satisfactorily by inquiring into the prudence of pipeline acquisitions of leasehold interests. Two Courts of Appeals have unanimously so concluded in this case (287 F. 2d at 146 and 336 F. 2d at 326). The Tenth Circuit came to the same conclusion in the "Bastian Bay" case. See *Tennessee Gas Transmission Co.* v. *FPC*, 340 F. 2d 100, 102 (1965). UGI conceded that, without asserting jurisdiction over the sale of leases, the Commission could "effectively control the situation" (R. 727). Commissioner O'Connor was persuaded that: "There is nothing inherent in a one-shot transaction that precludes effective regulation" (R. 983).[74] Commissioner Woodward, for reasons he so cogently expressed, disavowed the majority's whole course of conduct (R. 1230-1233). Thus, this case is here

[74] Commissioner O'Connor went on in his separate opinion, to show why this is so, and concluded: "The net effect [of the majority's position] would be that a pipeline with the staff, facilities, and finances for exploration and development could obtain its own production with all the advantages thereof, but a pipeline not in a position to carry out an exploration program could not obtain its own production by purchasing proven reserves in place. Such a result, I submit, would be violative of the public interest" (R. 983-984).

because a bare majority of three Commissioners have tried to expand their powers far beyond permissible statutory limits.

Over four years ago, the D. C. Court of Appeals directed the Commission to "regulate the purchaser, regardless of the status of the seller" by ascertaining whether Texas Eastern's acquisition costs "will be consistent with the public convenience and necessity" (287 F. 2d at 146; R. 867). Although the Commission at first embarked upon such an inquiry (R. 869-872), it later decided to disobey the D.C. Circuit's mandate. Rather than do what the appellate court had directed — appraise Texas Eastern's acquisition costs — the Commission "deferred" any decision on that question (R. 981, 1229) and elected, instead, to attempt to usurp forbidden powers.

Last August, the Fifth Circuit again remanded the matter to the Commission "to determine whether the public convenience and necessity require that the [Texas Eastern] certificate be denied, granted, or granted conditionally, in view of the cost of acquisition" (336 F. 2d at 326; R. 1289)[75]. Instead of accepting this second appellate mandate, the Commission sought review in this Court.

Extensive evidence was introduced in this case by Texas Eastern showing the reasonableness of its lease acquisition costs. Despite the mandates of two Courts of Appeals, the Commission steadfastly refused to pass on this issue. Instead, FPC reached for more power than Congress had granted. Until the Commission has at least tried in good faith to perform its regulatory functions, we submit it has no basis for saying that the method of regulation directed by the Courts of Appeals is "ineffective."

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[75] The Court added: "We note with regret that this is essentially what the D.C. Circuit told the Commission to do three and one-half years ago" (336 F. 2d at 326; R. 1289).

As shown by the evidence reviewed in the Appendix to this brief, the reasonableness of the cost of leases to a pipeline company can be determined in a certificate case under Section 7(c) of the Act; and in this way the Commission can adequately safeguard consumer interests. There is, accordingly, no prospect of frustration of "effective" regulation; there is no regulatory "gap"; and there is no lack of protection for consumers.

At the end of its brief (pp. 38-41), the Commission offers a number of forebodings and excuses in a vain effort to show that regulation of a pipeline purchaser of leases might not work to perfection. This entire line of argument, however, is based on pure speculation. None of the contrived risks, hazards and adverse possibilities portrayed in FPC's brief is present in the case at bar. The outcome here surely does not depend upon imaginary different circumstances which might conceivably appear in the record of some hypothetically different case.

B. Only Congress can bestow upon the Commission the added regulatory powers it professes to need

In *Panhandle*, this Court told the Commission that if it wanted "power to control the disposition of leases by natural-gas companies, it is authorized to call the attention of Congress to that fact" (337 U.S. at 515). The Commission has asked Congress for such power in 13 out of the last 14 years (see *ante*, p. 31-32). Taking note of these facts, the Court below added: "If in its wisdom Congress has declined to act, we have neither the power nor the inclination to act in its stead" (336 F. 2d at 326; R. 1288). There can be no doubt as to the soundness and correctness of this holding.

The Commission is entirely a creature of Congress and the determinative question here "is not what the Board [Commission] thinks it should do but what Congress has said it can do." *Civil Aeronautics Board* v. *Delta Air Lines*, 367 U.S. 316, 322 (1961, opinion by Mr. Chief Justice Warren). The Commission has heretofore been told in no uncertain terms that its quest for more authority than appears on the face of its grant should be addressed to Congress; not to the courts. *Border Pipe Line Co.* v. *FPC*, 171 F. 2d 149, 152 (D.C. Cir. 1948).

The identical arguments advanced by the Commission here — about regulatory necessity and jurisdictional "gap" — were presented and found wanting in *Panhandle*.[76] Acts of Congress should not, in effect, be amended every time an administrative agency complains that the existing statute is inadequate and therefore some fancied "gap" should be closed by means of judicial interpretation. As was so aptly stated (per Mr. Justice Frankfurter) in *Addison* v. *Holly Hill Fruit Products*, 322 U.S. 607, 617 (1944):

> "Legislation introducing a new system is at best empirical, and not infrequently administration reveals gaps or inadequacies of one sort or another that may call for amendatory legislation. But it is no warrant for extending a statute that experience may disclose that it should have been made more comprehensive. 'The natural meaning of words cannot be displaced by reference to difficulties in administration.'"

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[76] In its brief to this Court, the Commission protested as follows:

> "The existence of Commission control over a natural gas company's disposition of its gas reserves is necessary for effective regulation from several different aspects. The absence of such jurisdiction would result in substantial gaps in the comprehensive regulatory scheme of the natural gas industry envisioned by Congress. . . ." (Petitioner's Brief, U.S. Sup. Ct. No. 558, October Term 1948, at pp. 35-36).

C. The record here establishes that Texas Eastern's investment in the Rayne Field leases was in all respects prudent and in the public interest

The extensive evidence on this subject is summarized in the Appendix hereto. As appears from that summary, the amount which Assignors will receive for the Rayne Field leasehold interests they conveyed to Texas Eastern works out to 17.15¢ per Mcf. That is far below the going price for gas in southern Louisiana at the time of the lease conveyance and almost two cents per Mcf lower than the reduced "ceiling" price subsequently set by the Commission.

Texas Eastern's unit cost for the Rayne gas is lower still — 16.57¢ per Mcf — after giving credit for net revenues Texas Eastern will eventually receive from sales of condensate. Even if this unit cost is loaded with amounts Texas Eastern pays to persons other than the Assignors for royalty interest gas, and with Louisiana severance taxes, the unit cost is only 19.44¢ per Mcf. That is four to five cents per Mcf lower than the unit price Texas Eastern actually pays for comparable volumes of gas from any other source and between five and twelve cents per Mcf lower than Texas Eastern would have had to pay for any available alternative gas supply.[77]

In addition to providing Texas Eastern with just about the cheapest gas in its system, its Rayne Field leasehold interests enable it to realize many other advantages in the form of lower operating costs, greater flexibility and operating efficiency, and freedom from future gas price escalations and from triggering of gas prices under "most favored nation" clauses. Indeed, the Rayne Field lease acquisition

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[77] For purposes of comparison all prices were adjusted to reflect gathering and transportation costs up to a common point at Opelousas, Louisiana, where the Rayne gas enters the Texas Eastern trunk line system.

was the only means by which Texas Eastern could satisfy its customers' urgent requirements for additional gas deliveries and at the same time "hold the line" on the cost of gas to consumers (R. 544-549).

The record in this case shows that Texas Eastern's purchase of the Rayne Field leases was a most prudent investment and fully consonant with the public convenience and necessity. No additional regulatory authority is needed by the Commission in order to consider and decide this question — the only question open for determination under the appellate courts' mandates. The record here furnishes no ground whatever for judicial sanction of the Commission's attempted seizure of jurisdictional powers Congress has deliberately withheld and declined to bestow.

CONCLUSION

The judgment below of the United States Court of Appeals for the Fifth Circuit should be in all respects affirmed.

Respectfully submitted,

ABE FORTAS
Of Counsel for all Respondents

LLOYD F. THANHOUSER
THOMAS H. BURTON, JR.
Of Counsel for Respondent Continental Oil Company

DONLEY C. WERTZ
JOHN T. GUYTON
Of Counsel for Respondent M. H. Marr

JOHN A. WARD, III
HERF M. WEINERT
Of Counsel for Respondent Sun Oil Company

JACK D. HEAD
KEITH M. PYBURN
Of Counsel for Respondent Texas Eastern Transmission Corporation

DAVID T. SEARLS
Counsel for all Respondents

BRUCE R. MERRILL
Counsel for Respondent Continental Oil Company

W. McIVER STREETMAN
Counsel for Respondent General Crude Oil Company

STANLEY M. MORLEY
Counsel for Respondent M. H. Marr

ROBERT E. MAY
Counsel for Respondent Sun Oil Company

W. D. DEAKINS, JR.
Counsel for Respondent Texas Eastern Transmission Corporation

Dated: April 14, 1965

APPENDIX

Summary of evidence justifying Texas Eastern's acquisition costs and demonstrating that its purchase of the Rayne Field leases was a prudent investment and consistent with the public convenience and necessity

1. Reasonableness of the Assignors' lease sale price. When the total lease sale price — $134.4 million — is divided by the estimated volume of recoverable gas reserves represented by the Assignors' 95% of the Rayne Field working interest — 783.5 million Mcf (R. 30; Ex. X-5, p. 13, R. 763) — it appears that Assignors will receive approximately 17.15¢ for each Mcf of such gas produced (R. 30, 460, 1191). So far as the Assignors are concerned, therefore, their "critical unit revenue" from the sale of their leases is 17.15¢ per Mcf (R. 1203-1204).

This computed 17.15¢ price is almost two cents per Mcf *below* the reduced "ceiling" price of 18.95¢ established by the Commission in October 1961 for initial sales of gas in southern Louisiana (R. 894, footnote 17). What is more, this computed 17.15¢ price is even farther *below* the prices prevailing in 1958 and the first half of 1959 for southern Louisiana gas, as was proved by an analysis of over 200 gas sales contracts on file with the Commission, scores of which contracts the Commission had approved and certificated unconditionally (R. 498-511, 545, 552; Ex. X-6, R. 765-814).

2. Reasonableness of Texas Eastern's lease acquisition costs. In addition to acquiring the Assignors' 95% working interest in the Rayne Field, Texas Eastern acquired, on similar terms, the remaining 5% of such working interests from others, none of whom is before this Court

(Ex. X-5, pp. 12, 13, R. 763; Ex. X-12, R. 820).[a] For the years 1961 through 1989 (the estimated remaining life of the field), Texas Eastern's net cost for its 100% working interest Rayne gas production will be 16.57¢ per Mcf (R. 556-565; Ex. X-4, R. 751).[b] Texas Eastern must pay out further sums, over the years, for royalty interest gas and Louisiana severance taxes, but such expenditures do not properly constitute any part of Texas Eastern's lease acquisition costs (R. 560-562). However, if those items at current rates are added to Texas Eastern's actual outlay for the 100% working interest, Texas Eastern's unit cost for Rayne gas will amount to 19.44¢ per Mcf (R. 567-568; Ex. X-14, R. 822).[c]

Petitioner's briefs do not even mention the evidence with respect to Texas Eastern's actual *lease acquisition costs*. Instead, they refer to the highest estimated unit *cost of service* (24.34¢ per Mcf) for making Rayne Field gas available over the 29-year life of the leases, including all costs of producing, gathering, separating, compressing and delivering the gas at high pressures, plus a 6% "rate of return", plus federal income taxes equal to 52% of such "return".[d] Such cost of service estimates of course have no

---

a Such other parties are Dishman et al., Kirby, Muller and Texas Gas.

b This cost includes credit for Texas Eastern's $9 million of net revenues from condensate production, over and above operating expenses, after the production payments have been liquidated (R. 558-559; Ex. X-4, Col. F, R. 763).

c The computation adding these items to the true acquisition cost was requested by the FPC Staff (R. 563, 567).

d These cost of service estimates were prepared solely "for illustrative purposes" on the basis of "various assumptions" as to the rate of return Texas Eastern might be able to realize and as to the amount of federal income taxes Texas Eastern might in consequence be required to pay (R. 568-572; Exs. X-15 through X-18, R. 823-826).

relation to the issues in this case.[e] However, it was shown that even this highest estimate compares favorably with Texas Eastern's cost of service for making available large supplies of gas already connected to its system. At Opelousas, Louisiana (where the Rayne gas enters Texas Eatsern's system), Texas Eastern's current gas costs in 1961 were as follows: for gas purchased along the "Wilcox Trend" — 24.0¢ per Mcf; for gas purchased in south Texas — 24.7¢ per Mcf; and for gas purchased from Pemex at the Mexican border — 24.6¢ per Mcf (R. 520-521; and see Map, Ex. X-7, R. 815). Over the lives of the contracts covering Texas Eastern's gas purchases in south Texas and from Pemex, the cost will be 26.1¢ and 25.8¢ per Mcf, respectively (R. 521-522).

Texas Eastern had negotiated for, and considered the purchase of, other large gas reserves in south Texas and offshore Louisiana, but the cost of gas from those reserves at Opelousas would have ranged from 28.02¢ to 31.82¢ per Mcf (R. 523-524).

Gas purchased by other pipeline companies in southern Louisiana would, if delivered to Texas Eastern's system at Opelousas, have involved the following unit costs (R. 525-531):

Gas purchased by	Cost per Mcf at Opelousas
Trunk Line	26.52¢
Southern Natural	24.93¢
United Gas Pipe Line	24.8¢
Texas Gas Transmission	23.95¢
Transcontinental Gas Pipe Line	25.6¢ to 33.3¢
Hope Natural Gas	26.89¢

---

e We are not here concerned with any such speculative *cost of service* estimate, but only with Texas Eastern's actual *lease acquisition costs.*

The cost to Texas Eastern of gas produced from its own leases (other than those at Rayne) was 44.34¢ per Mcf according to Texas Eastern's calculations; but FPC Staff personnel "developed a cost of 23.2781 cents per Mcf for company-produced gas" in the field (R. 562-563). Of course, the cost of this gas transported to Opelousas would be substantially higher.

In the light of all the evidence, summarized above, Texas Eastern's unit acquisition cost of 16.57¢ (or 19.44¢) for its Rayne Field gas production clearly represented an exceptional bargain (See: R. 545-546).

3. **Other advantages to Texas Eastern and gas consumers.** Aside from the materially lower cost of the gas Texas Eastern produces at Rayne, the leasehold acquisition yielded many other "singular advantages" (R. 1204) for Texas Eastern — and hence for its customers and their customers, the gas consumers. Among these advantages were the following:

(a) By producing its own gas, Texas Eastern can vary its takes to meet the seasonal and cyclical needs of its system (R. 1193). The greater flexibility thus provided is unavailable under standard gas sale contracts, which contain rigid "take-or-pay-for" clauses; and such flexibility enables Texas Eastern to operate much more efficiently (R. 75-77, 462, 546-547.)

(b) Texas Eastern has a permanent, firm, fixed price for its Rayne gas, rather than a price that will escalate in the future in accordance with automatic and indeterminate price increase clauses found in virtually all standard gas sale contracts (R. 31-33, 77-78, 461).

(c) The purchase of leases, rather than gas, eliminated any possibility of triggering price increases

under "favored nation" and "price redetermination" clauses usually appearing in standard gas sale contracts; and this advantage inured not only to Texas Eastern but to all other pipeline companies purchasing gas in the southern Louisiana area (R. 14-15, 85-86, 462, 545, 1193).[f]

(d) The large size of the Rayne Field and its close proximity to Texas Eastern's trunk line made possible the elimination of heavy gathering and transportation costs, a tie-in of the field with a relatively small investment, and prompt commencement of gas deliveries as soon as the spur line and compressor station could be installed (R. 6, 11, 459-460, 545, 547, 1194).

(e) There were favorable possibilities of finding additional gas reserves underlying the leases acquired by Texas Eastern; and if such additional reserves were discovered, Texas Eastern's unit cost for Rayne Field gas would be reduced still further (R. 459, 548-549, 591).

All of these additional advantages ultimately redound to the benefit of the gas consuming public.

---

[f] One of the principal objections to the original (later abandoned) gas sale proposal of the parties had been that it might "trigger" numerous existing contract prices, with a resulting increase in Texas Eastern's gas costs by as much as $10 million annually (R. 16-19, 31, 32, 544).

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IN THE

Supreme Court of the United States

October Term, 1964.

No. 644.

THE UNITED GAS IMPROVEMENT COMPANY,
Petitioner,

v.

CONTINENTAL OIL COMPANY, et al.,
Respondents.

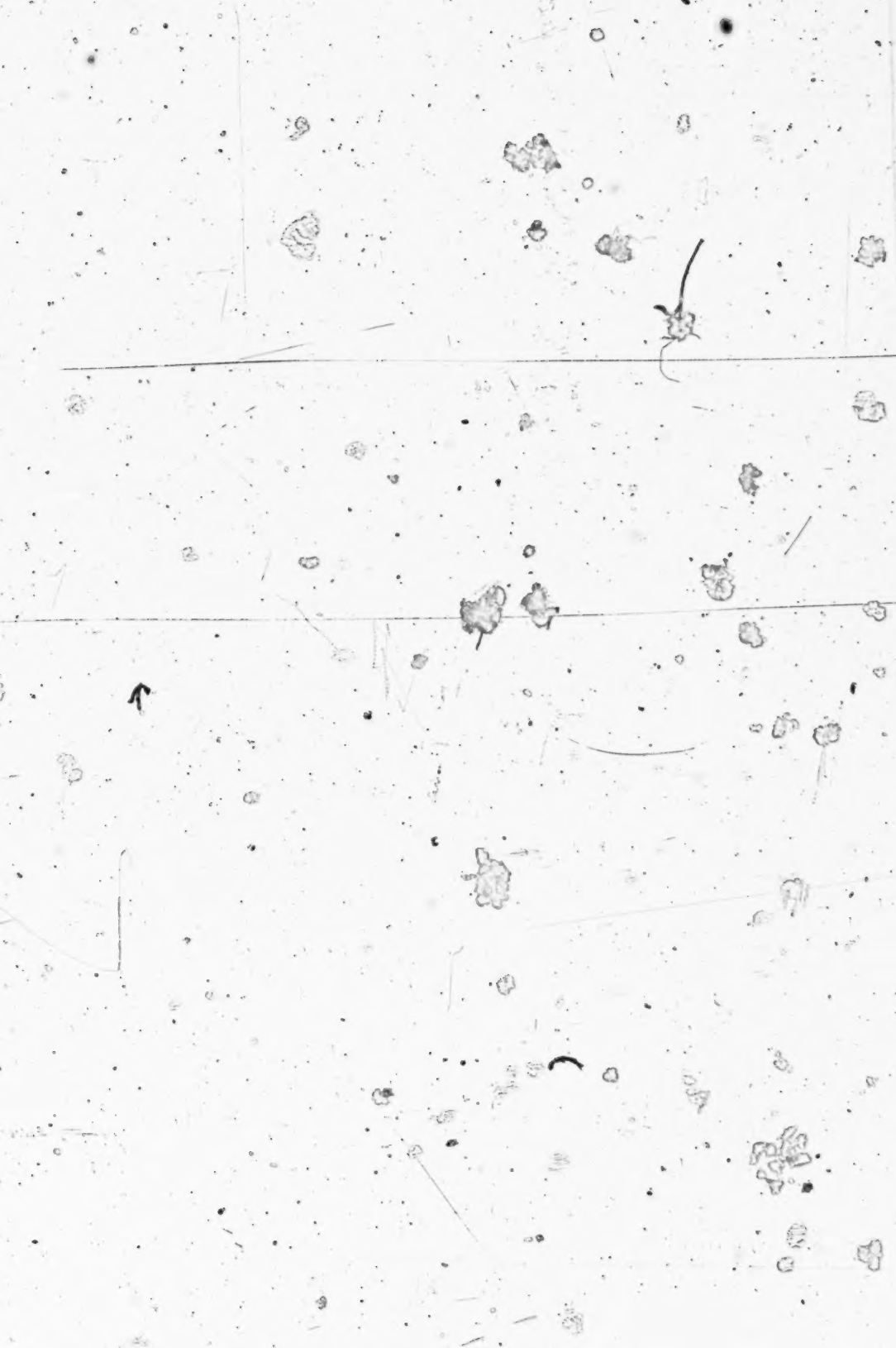
On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

REPLY BRIEF FOR PETITIONER, THE UNITED GAS IMPROVEMENT COMPANY.

WILLIAM T. COLEMAN, JR.,
ROBERT W. MARIS,
RICHARDSON DILWORTH,
HAROLD E. KOHN,
2635 Fidelity-Philadelphia Trust Bldg.,
Philadelphia, Pa.,
Attorneys for Petitioner.

DILWORTH, PAXSON, KALISH, KOHN & DILKS,
Of Counsel.

International, 711 So. 50th St., Phila., Pa. 19143



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ABBREVIATIONS

The following abbreviations of names are used in this Reply Brief:

Abbreviation	*Refers To*
Continental	Respondent Continental Oil Company
Commission	The Federal Power Commission, Petitioner in No. 693
New York Commission	The Public Service Commission of the State of New York
Petitioner	Petitioner The United Gas Improvement Company
Texas Eastern	Respondent Texas Eastern Transmission Corporation

IN THE

Supreme Court of the United States.

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THE UNITED GAS IMPROVEMENT COMPANY,
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v.

CONTINENTAL OIL COMPANY, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

REPLY BRIEF FOR PETITIONER, THE UNITED GAS IMPROVEMENT COMPANY.

ARGUMENT.

I. Introduction.

Two issues raised by respondents herein in their brief will be considered in this reply: The first is a contention by respondents, involving statutory construction and raised for the first time by respondents in their brief to this Court, that the term "natural gas" used in Section 1(b) of the Natural Gas Act, 15 U. S. C. § 717(b), does not comprehend gas in a state of nature in the ground. The second contention concerns the effect to be given the decision of the Court of Appeals for the District of Columbia rendered at an earlier stage in the present proceeding. Both contentions of respondents are without substance.

II. The Meaning of "Natural Gas" in the Statutory Phrase "A Sale of Natural Gas In Interstate Commerce For Resale" Contained in 15 U. S. C. § 717(b).

A. The Issue Is Not Properly Before This Court.

At the outset, it must be noted that § 19(b) of the Natural Gas Act provides:

> "No objection to the order of the Commission shall be considered by the [reviewing] court unless such objection shall have been urged before the Commission in the application for rehearing . . ." 15 U. S. C. 717r(b).

While the Applications for Rehearing of the various respondents raised innumerable objections to the Commission's Opinions 378 and 378A they nowhere raised the issue of statutory construction now raised for the first time in their brief to this Court. Compare Continental's "Application for Rehearing" (R. 1024-25, at 1037) in which the term "natural gas" is discussed at some length, but only in the context of attempting to show the Commission that "natural gas" is not an incorporeal interest in real estate.

It has been held that "the presentation of a ground of objection in an application for rehearing is an *indispensable prerequisite* to the exercise of power of judicial review of the order on such ground." *Pan American Petroleum Corp. v. FPC*, 268 F. 2d 827, 830 (10th Cir. 1959) (Italics added); *FPC v. Colorado Interstate Gas Co.*, 348 U. S. 492. Therefore, respondents are foreclosed from now raising this novel ground based on statutory construction.

B. The Construction Sought by Respondents Is Erroneous.

In any event, the strained and limited construction of the term "natural gas" sought by respondents has no basis in the Act or in cases construing the Act.[1] The term as used in the Act, however, *has* been authoritatively construed by the Court of Appeals for the Fifth Circuit. *Deep South Oil Co. v. FPC*, 247 F. 2d 822, 888 (5th Cir. 1957), *cert. denied sub nom., Humble Oil & Ref. Co. v. FPC*, 355 U. S. 930 (1958). The court there specifically rejected a contention essentially similar to respondents' that the phrase "natural gas" comprehended only the commodities methane and ethane which are generally transported and ultimately sold in interstate commerce. In its sworn Application for Rehearing of Opinion No. 378 (R. 1013-89) respondent Continental adopted the definition found in the *Deep South* opinion, stating:

> "The *normal meaning* of 'natural gas' has been held to be 'a mixture of gaseous hydrocarbons *found in nature*' [citing *Deep South, supra*]." (R. 1024) (Italics added.)

Petitioner also accepts that definition and points out that it clearly includes the gaseous hydrocarbons found in nature and sold as "gas in place" (R. 426) by respondent Continental and the other producer-respondents herein. Therefore these sales clearly fall within the Commission's jurisdiction over "sales of natural gas in interstate commerce for resale" under § 1(b) of the Act.

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1. The opinions of this Court cited by respondents, *Pennsylvania v. West Virginia*, 262 U. S. 586; *West v. Kansas Natural Gas Co.*, 221 U. S. 229, dealt with entirely different issues. The former case, however, does recognize that the words "natural gas" themselves have the broad meaning respondents would limit, for it states at p. 586: "Natural Gas is found at pronounced depths in porous strata—usually sand rock—constituting a natural reservoir . . .", just like the natural gas in the present case.

III. The Effect of the Earlier Decision of the Court of Appeals for the District of Columbia Circuit.

The Court of Appeals below did not find that the earlier decision of the Court of Appeals for the District of Columbia Circuit in this litigation foreclosed its consideration of the merits of the jurisdictional issue presented to it. However, respondents in their brief to this Court, after arguing the merits, go on to argue that this Court is precluded from considering the merits by the effect of either (1) the finality of the earlier court of appeals decision or (2) the "law of the case" allegedly established by that decision. This argument necessarily assumes that even though this Court should hold as a matter of law, as Petitioner contends, that the Commission has jurisdiction under the Natural Gas Act over transactions identical to that involved in the present case, nonetheless the producer-respondents herein can enjoy special immunity from the exercise of that jurisdiction because of events peculiar to the course of this litigation, even while other bulk sales in place to other interstate pipelines would be subject to regulation. See the Commission proceedings cited on p. 30 of Petitioner's Main Brief, one of which proceedings is the subject of petitions for writs of certiorari at Oct. Term, 1964, Nos. 1024 and 1025. Respondents' argument thus is a highly technical one.

A. Who Are the Parties?

When the Commission reopened the present proceeding on February 19, 1959, to deal with the new proposal of Texas Eastern—involving what respondent Continental has described as a sale of "gas in place" (R. 426)—the only parties to the litigation were Texas Eastern, the Commission and certain intervenors representing consumer interest, including Petitioner and the Public Service Commission of New York. As the producer-respondents have protested strongly (R. 1170) in various pleadings to the Commission (*e.g.*, R. 1062-76) they were not parties to that

proceeding. Yet now, in the face of that fact, they claim the full benefit of the alleged "law of the case" affecting their status, purported to stem from an appeal to the District of Columbia Circuit in which they played no role and were not parties.

Moreover, Petitioner herein was not a party to the proceedings in the Court of Appeals for the District of Columbia.

B. The Issues.

The respondents raise two issues (Resp. Br. pp. 51-58) which actually present two aspects of but a single claim. The first asserts the finality of a decision rendered upon proper appeal under Section 19(b) of the Natural Gas Act, 15 U. S. C. § 717r(b), as to all issues decided expressly or by necessary implication. The second goes to the binding effect of such a decision on remand. In substance both claims assert an identical policy of finality, and merely point to different origins, in the one case statutory and in the other traditional or "common law." Both claims rest on the policy that an issue properly raised, explored and decided by a competent appellate tribunal should generally not be relitigated *de novo* between the same parties in subsequent phases of the litigation. While this principle may be sound in its abstract statement, it has no application to the present proceeding, for the jurisdictional issue herein was not raised before or decided by any tribunal prior to the phase of this proceeding now before this Court which began after the remand by the Court of Appeals for the District of Columbia.

C. What Was Decided in the First Phase of the Present Proceeding?

Any analysis of precisely what has been decided by an appellate tribunal in an earlier stage of litigation must be based on a proper understanding of appellate judicial process and the concepts of holding and dictum. The following

general principles govern any such analysis. In *Vicksberg v. Henson*, 231 U. S. 259, 269, this Court said:

> "It is well settled, however, that a decree is to be construed with reference to the issues it was meant to decide. Graham v. Railroad Company, 3 Wall. 704, 710; Reynolds v. Stockton, 140 U. S. 254; Vicksburg v. Vicksburg Water Works Co., 206 U. S. 496, 507; Haskell v. Kansas Natural Gas Co., 224 U. S. 217, 233."

And again at p. 273:

> "The nature and extent of the former decree is not to be determined by seizing upon isolated parts of it or passages in the opinion considering the rights of the parties, but upon an examination of the issues made and intended to be submitted and what the decree was really designed to accomplish. We cannot agree with the court below or with the majority of the Circuit Court of Appeals that the effect of the former adjudication was to preclude the rights of the parties in the present controversy."

Or, as it was put in *Norfolk & W. Ry. Co. v. Board of Education*, 114 F. 2d 859, 861 (7th Cir. 1940):

> ". . . the intent of an adjudication is to be determined not from mere isolated parts of the opinion but from consideration of all issues submitted and intended to be disposed of, in other words, from what the decree is really designed to accomplish . . ."

And, closer to the present controversy, the District of Columbia Circuit itself has had occasion recently to point out to one of the producer-respondents herein, in response to a similar argument by it, that the Court's descriptive and explanatory comments in prior decisions are not to be seized upon as the "holdings" of those cases simply because their language, taken out of context, would appear

to coincide with the petitioner's argument. In *Public Service Comm. v. FPC*, 329 F. 2d 242 (D. C. Cir. 1964), *cert. denied*, 377 U. S. 963, Continental and others argued that the court, in a prior decision, had held that the Commission lacked power to require refunds of excessive charges collected by gas producers under temporary certificates of public convenience and necessity. The court responded: "As to this we may say initially that *our statement* in *Atlantic Ref. Co. v. FPC*, 316 F. 2d 677, 679 (1963), that there is no mechanism for refund of overcharges under Section 7, *is not a holding* that a refund may never be required when a permanent certificate takes over from a temporary one, *an issue not there considered.*" (Italics supplied.) The District of Columbia Circuit's "statement", relied on by petitioners here as establishing "the law of the case", clearly was not the "holding" of its decision in *Public Service Comm'n v. FPC*, 287 F. 2d 143 (D. C. Cir. 1960), either. The issue here presented was "not there considered". The failure of respondents to take the present appeal back to the District of Columbia Circuit, the Circuit which, according to their brief, had "expressly held that the Commission has no jurisdiction over the Assignors' conveyance" (Resp. Br. p. 24) and would be most familiar with that "law of the case" if it really existed, suggests a less than complete confidence in what that court in fact "expressly held."

With the above principles of judicial process in mind one can turn instructively to the facts of the present case.

When each of the producer-respondents filed a notice of withdrawal of its certificate application in the earlier phase of the proceeding, in order to avoid litigation on the initial price issue (R. 1014-18), none sought or obtained a disclaimer of further Commission jurisdiction in the matter. Therefore, producer-respondents' withdrawal was not based on any Commission ruling or determination as to their jurisdictional status, but solely upon their own untested assumption on the subject.

None of the parties before the Commission in the earlier phase of the proceeding which culminated in Opinion No. 322 raised any jurisdictional issue.[2] Nor did the Commission decide the issue *sua sponte* in Opinion No. 322. That entire opinion (R. 446-67) as well as the express findings therein (R. 464-65) will be searched in vain for any advertence to or resolution of a question of the jurisdiction of the Commission under § 1(b) of the Act over the sales by producer-respondents. *FPC v. Panhandle Eastern Pipe Line Co.*, 337 U. S. 498, for example, is not even cited in Opinion No. 322.

The passage in that opinion upon which respondents apparently rely for their statement (Resp. Br. p. 51) that the Commission "held in its Opinion No. 322 that it had no jurisdiction over the conveyance of Rayne Field leases" is found at R. 456:

> "*Texas Eastern* has not filed an application for a certificate authorizing the *acquisition* of the Rayne Field leases and we have no authority to issue such a certificate." (Emphasis supplied.)

The statement refers only to *Texas Eastern* and asserts that pipelines need not apply for certificates to *acquire* gas and the Commission has no power to grant such certificates.[3] In short, while obviously the Commission did not at that time *exercise* jurisdiction over the subject transaction, it never, by declaratory order or otherwise, dealt with the issue of jurisdiction in any way. Compare *Colum-*

2. It must be recalled that Opinion No. 322 was issued at the height of the former Commission's erroneous policy of certificating out-of-line prices. All these certificates, including the subject one, were subsequently reversed. *E.g. Atlantic Ref. Co. v. Public Service Comm'n.*, 360 U. S. 378. Since the Commission was then erroneously prepared to approve on its face the present transaction on the merits, it could hardly have been expected to bring in the absent producer-respondents in order to hand them certificates they had not sought, to carry out their arrangement.

3. The Commission's jurisdiction extends to the sale of gas and the construction of facilities. 15 U. S. C. §§ 717 and 717f.

bia Fuel Corp., 2 FPC 200 (1940) and *Phillips Petroleum Corp.*, 10 FPC 246 (1951), *rev'd*, 347 U. S. 672, in each of which the Commission made entirely explicit its disavowal of jurisdiction over certain sales and square review of such holding, therefore, was possible.

The foregoing discussion of Opinion No. 322 actually disposes of respondent's contentions, since the Court of Appeals could hardly have decided *sua sponte* a complex factual issue not even adverted to by the administrative decision it was reviewing. But to further underline the groundlessness of respondents' "law of the case" argument, it is only necessary to examine in conjunction the New York Commission's "Application for Rehearing" of Opinion No. 322 (R. 467-75) and the "Statement of Questions Presented" in the brief of the then-respondent Federal Power Commission to the District of Columbia Circuit in the earlier appeal herein (R. 1182-83). Neither raises in any way the issue of the Commission's jurisdiction under § 1(b) of the Act over the sales by producer-respondents. Section 19(b) of the Natural Gas Act provides:

> "No objection to the order of the Commission shall be considered by the [reviewing] court unless such objection shall have been urged before the Commission in the application for rehearing . . ." 15 U. S. C. § 717r(b).

The application of the New York Commission raised no jurisdictional issue and the Court of Appeals was therefore deprived of jurisdiction for considering or deciding any. *Pan American Petroleum Corp. v. FPC*, 268 F. 2d 827, 830 (10th Cir. 1959); *FPC v. Colorado Interstate Gas Co.*, 348 U. S. 492. Its passing statements on the issue are therefore necessarily dictum, binding in no way on either the Commission on remand or upon this Court.

D. Effect of the Mandate of the District of Columbia Court.

In reviewing Opinion 322 and remanding for further proceedings the District of Clumbia Circuit said:

> "Two courses are open to the Commission. It may, by clarification of the order presently under review, expressly disclaim any approval of the price to be paid for natural gas by the applicant. See Kansas Pipe Line and Gas Co. et al., supra note 4. Or it may reopen the record in the certificate proceeding to permit Texas Eastern to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity." 287 F. 2d at 146; R. 867.

The case was remanded "for further proceedings not inconsistent with the opinion of this court." *Ibid.*

A reading of the respondents' brief to this Court (Resp. Br. pp. 52, 54-58) and the strong reliance placed therein upon the earlier mandate might lead the unwary to conclude that all respondents had been parties to that appeal and had been victorious. In actuality, of course, only respondent Texas Eastern was an intervenor-respondent in the earlier appeal, and far from winning, Texas Eastern saw the District of Columbia Circuit accept every contention of the petitioner, The New York Commission, and reverse a Commission order favorable to Texas Eastern.[4] In remanding, the court pointed out the possible

4. Since the New York Commission was victorious in the District of Columbia Circuit, it could not seek review of that Court's decision by this Court merely to erase language in the opinion it might not be satisfied with. Moreover the position of the New York Commission was that it could achieve its relief even if there was no jurisdiction over the transaction. It did contend, however, on remand that the transaction was jurisdictional (R. 723-724).

courses of action open to the Commission in dealing with *Texas Eastern* and only Texas Eastern.[5]

The thrust of respondents' argument is that the Commission's exercise of jurisdiction over producer-respondents is "inconsistent" with the mandate relating to Texas Eastern. The fallacy of this reasoning is highlighted by the simple fact that it is Texas Eastern and the producers who are now challenging the action of the Commission, not the New York Commission, the victor in the former appeal. No action or order of the Commission in regard to *Texas Eastern* is in any way inconsistent with thrust of the decision of the District of Columbia Circuit (which relied heavily on this Court's decision in *Atlantic Ref. Co. v. Public Service Comm'n.*, 360 U. S. 378) that the Commission could not abdicate its statutory duty to effectively regulate the subject transaction in the public interest. (See R. 980-81.) The Commission's exercise of jurisdiction over the producers, far from being "inconsistent" with that mandate, goes far to make it more effective, since it ensures continuing effective regulation of the transaction without the pitfall present in the exercise of jurisdiction over Texas Eastern alone—that unforeseen latent excess costs must necessarily fall on either the consumer or Texas Eastern's stockholders.

CONCLUSION.

For the foregoing reasons, respondents' arguments as to "finality" and "law of the case" are groundless, and the Commission properly considered on the merits the issue of jurisdiction over the producer-respondents. For

5. One can imagine the reaction of the absent producer-respondents and the claims of deprivation of due process (compare R. 1170) had the District of Columbia Circuit in fact done what respondents now claim it has done; that is, decided the issue of how the Commission should deal with the transfer by producer-respondents—but decided it in such a way that the court affirmatively ordered the Commission to regulate the producers!

the reasons set forth in Petitioner's original brief to this Court the Commission's decision on that issue was correct. Therefore this Court should reverse the decision of the Court of Appeals for the Fifth Circuit and grant the relief requested in Petitioner's original brief.

Respectfully submitted,

WILLIAM T. COLEMAN, JR.,
ROBERT W. MARIS,
RICHARDSON DILWORTH,
HAROLD E. KOHN,
Attorneys for Petitioner.

DILWORTH, PAXSON, KALISH, KOHN & DILKS,
Of Counsel

April 26, 1965.

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 693

FEDERAL POWER COMMISSION, PETITIONER

v.

M. H. MARR, SUN OIL COMPANY, CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL COMPANY, TEXAS EASTERN TRANSMISSION CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF FOR THE FEDERAL POWER COMMISSION

I

Respondents argue (Br. pp. 51–58) that in setting aside the Commission's original order granting a certificate the Court of Appeals for the District of Columbia Circuit determined that the Commission lacked jurisdiction over the leasehold transfer, and that this determination became the law of the case, effectively foreclosing the jurisdictional issue presented here. This question was briefed in the court below but left open by the Fifth Circuit (R. 1288–1289).

A. Nothing in the mandate of the court of appeals foreclosed reconsideration of the jurisdictional issue,

because the court did not rule upon it. The Commission's original order granting Texas Eastern a certificate to construct facilities was admittedly based upon the expressed view that the FPC lacked authority to certificate the leasehold transfer itself (R. 456). But that aspect of the Commission's decision never became an issue in the court of appeals. The New York Public Service Commission, sole petitioner in the proceeding, did not challenge the Commission's view that it had no jurisdiction over the leasehold sale; indeed the New York Commission explicitly endorsed that view, both before the FPC and before the District of Columbia Circuit.[1] Its only argument was that, regardless of the jurisdictional status of the in-place sale, the Commission was obliged to apply the "in-line" price standard of *Catco* in determining whether the proposed construction of facilities would serve the public convenience and necessity. And the court of appeals addressed itself to that question alone.

Indeed, under the governing statute, the question of the Commission's jurisdiction over the transfer of the leases was one which the court of appeals could not have considered even if raised by the New York Public Service Commission or another dissatisfied party. Section 19(b) of the Natural Gas Act (15

[1] See petition and brief filed by petitioner in *Public Service Commission of the State of New York* v. *Federal Power Commission*, C.A.D.C. No. 15412. Indeed, the petition had annexed to it as an "exhibit" the New York Commission's application to the FPC for rehearing, in which it expressly approved the Commission's jurisdictional position (R. 469).

U.S.C. 717r(b)) bars the reviewing court from passing upon any question not raised by a timely application for rehearing to the Commission.[2] That requirement has been rigorously and consistently enforced, both by this Court and the courts of appeals.[3]

Nor can it be said that the question of the Commission's jurisdiction over the sale of the leases was "an issue inherent in the controversy" (Resp. Br. 54)—one necessarily decided in resolving the question that was presented for decision (*i.e.*, whether the Commission was required to take the price of the leases into account in passing upon the pipeline's certificate application). The court of appeals noted explicitly that the assumed absence of regulatory control over the sale was "of no importance here" and that "the Commission's warrant to inquire [into Texas Eastern's acquisition costs] arises by virtue of its responsibility to regulate the purchaser, regardless of the status of the seller" (287 F. 2d at 146; R. 866).

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[2] The Federal Power Act contains an identical provision. 16 U.S.C. 825*l*.

[3] *Wisconsin* v. *Federal Power Commission*, 373 U.S. 294, 307; *Sunray Mid-Continental Oil Co.* v. *Federal Power Commission*, 364 U.S. 137, 157; *Panhandle Eastern Pipe Line Co.* v. *Federal Power Commission*, 324 U.S. 635, 649, 650–651; *Utah Power & Light Co.* v. *Federal Power Commission*, 339 F. 2d 436, 438 (C.A. 10); *Street* v. *Federal Power Commission*, 277 F. 2d 357 (C.A.D.C.); *Pan American Petroleum Corp.* v. *Federal Power Commission*, 268 F. 2d 827, 830 (C.A. 10); *Dayton Power & Light Co.* v. *Federal Power Commission*, 251 F. 2d 875, 876 (C.A.D.C.); *Continental Oil Co.* v. *Federal Power Commission*, 247 F. 2d 904, 907–908 (C.A. 5); *Magnolia Petroleum Co.* v. *Federal Power Commission*, 236 F. 2d 785, 789 (C.A. 5), certiorari denied, 352 U.S. 968.

Since the court of appeals did not decide the jurisdictional issue in controversy here, it was entirely appropriate for the Commission to reconsider the question upon remand. The court's mandate, which required only that the Commission respect the grounds of the court's decision, left it free to reopen the entire case, to re-examine any issues, and to take any other action consistent with the mandate that it deemed appropriate to the performance of its statutory functions. "On review the court may thus correct errors of law and on remand the Commission is bound to act upon the correction. * * * But an administrative determination in which is embedded a legal question open to judicial review does not impliedly foreclose the administrative agency, after its error has been corrected, from enforcing the legislative policy committed to its charge." *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 145. The Commission was bound to respect the rules of law laid down by the court on review but, equally, "[a]fter the remand was made * * *, the Commission was bound to deal with the problem afresh, performing the function delegated to it by Congress." *Securities and Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, 201.

B. Nor can it be argued that the Commission was precluded from asserting jurisdiction over the sale by virtue of its earlier disclaimer of such authority. An agency charged with responsibility for carrying out an important Congressional policy—here, that of protecting the consuming public against excessive gas prices—is not barred from taking appropriate action to

that end because of a mistake of law it may have made in the past. See *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, 678, fn. 5; *Economy Light & Power Co.* v. *United States*, 256 U.S. 113, 123; *Wilbur* v. *United States*, 281 U.S. 206, 217; *American Trucking Assns.* v. *United States*, 344 U.S. 298, 314. Cf. *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 309 U.S. 134. It is Congress which fixes the scope of the Commission's jurisdiction, and the fact that the Commission may previously have taken a too narrow view of its responsibilities does not alter the requirements of the statute. Moreover, the public interest in uniform administration of the Act would obviously not be served by granting to these petitioners an immunity from regulatory requirements which, if we are correct, will apply to all others similarly situated.[4] See *United States* v. *Stone & Downer Co.*, 274 U.S. 225, 236; Davis, *Administrative Law Treatise*, Vol. 2 (1958 ed.) p. 564.

Whatever problems might be presented if the Commission had sought to reopen a matter in which its order had become final and unreviewable, that is not the case here. The Commission's order granting a certificate to Texas Eastern was promptly challenged in the District of Columbia Circuit. It therefore remained open to modification, subject only to the requirement that the Commission act consistently with the court of appeals' mandate.

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[4] See *Federal Power Commission* v. *Pan American Petroleum Corp.*, pending on petition for certiorari, No. 1024, this Term, which does not involve the law of the case issue, but does present the same question as to the Commission's jurisdiction under the Natural Gas Act.

By the same token, respondents cannot claim that they were prejudiced by the Commission's change of view. They were aware that they acted at their peril if they proceeded with their plans while the certificate issued to them was being challenged. Nor have they been unfairly burdened. The court of appeals' mandate in any event required them to submit to a new administrative proceeding in which they would be called upon to demonstrate the reasonableness of their price.

II

Respondents do not seriously dispute our contention that the transaction in question, viewed in terms of the economic realities, is substantially equivalent to a conventional sale of gas at the wellhead. Their argument, as we understand it, is that, as a matter of State conveyancing law, the instruments they executed were legally effective to give Texas Eastern a leasehold interest in real property, *i.e.*, a right to enter, bring the gas to the surface, and thereafter reduce it to possession and ownership. In this, we shall assume, they are correct. Such a conveyance of real property interests, respondents continue, is neither a "sale * * * of natural gas" nor a sale "in interstate commerce" because it does not pass title to the natural gas as a commodity. Here, we disagree. The central issue between the parties, then, is whether the character of the transaction as a "sale in interstate commerce of natural gas" is to be determined on the basis of technical concepts drawn from the State law of property or sales, as respondents urge, or, as the Commission held, in accordance with the regulatory

objectives of the federal Act. We submit—and the decisions of this Court support our view—that the terms of a regulatory statute must be construed with a view to the economic realities and in furtherance of the basic purposes of the legislation.

This thesis is, of course, elaborated in our main brief. At this point, however, we wish to invite particular attention to *Gray* v. *Powell*, 314 U.S. 402, a case not previously discussed in this connection but one which bears striking similarities to the case at bar.

Gray v. *Powell* involved the interpretation of the Bituminous Coal Act of 1937, which prescribed a code of regulations for the soft coal industry, set up a commission to administer it, and imposed a heavy excise tax on "the sale or other disposal of bituminous coal" by producers other than those choosing to come under the code. One of the code provisions, set forth in Section 4–II of the Act, was that "No coal * * * shall be sold or delivered or offered for sale at a price below the minimum or above the maximum therefor established by the Commission, and the sale or delivery or offer for sale of coal at a price below such minimum or above such maximum shall constitute a violation of the code * * * " (314 U.S. at 404). The Seaboard Air Line Railway Company, a large consumer of coal, leased certain coal properties from the landowners and simultaneously contracted with various operators to run the mines and deliver the entire output to Seaboard for its own consumption. Seaboard claimed that its coal was not covered by the code because there had been no "sale or delivery or

offer for sale" by the producers (*i.e.*, the operators); rather, it was argued, the coal had belonged to Seaboard from the outset by virtue of its leasehold interest in the underlying lands. This Court rejected that contention, holding that "the purpose of Congress, which was to stabilize the industry through price regulation, would be hampered by an interpretation that required a transfer of title, in the technical sense, to bring a producer's coal, consumed by another party within the ambit of the coal code" (*id.* at 416). By the same token, we submit, the plain purpose of the Natural Gas Act would be hampered, if not defeated, by reading "sale" of "natural gas" to include only contracts passing title to the gas as personal property and to exclude transfers of leasehold interests serving essentially the same economic function.[8]

At one stage of this case, respondent Continental aptly described its revised transaction as one to "sell their gas in place" (R. 426). Viewed, as it must be, in terms of the regulatory objectives of the Natural

[8] Similarly, in dealing with phrases like "employee" and "arising out of and in the course of employment," the Court has repeatedly rejected the formulas used to determine the tort liability and fiduciary duties under the common law of agency. *E.g.*, *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U.S. 111, 127; *Cardillo* v. *Liberty Mutual Co.*, 330 U.S. 469, 481. It has looked instead to the policy of the Act, inquiring whether "the particular workers * * * are subject, as a matter of economic fact, to the evils the statute was designed to eradicate and the remedies it affords are appropriate for preventing them or curing their harmful effects * * *" *National Labor Relations Board* v. *Hearst Publications, Inc.*, *supra*, 322 U.S. at 127.

Gas Act, an "in place sale," by that or any other name, is still a sale of gas.

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.
RALPH S. SPRITZER,
FRANK GOODMAN,
Assistants to the Solicitor General.
RICHARD A. SOLOMON,
General Counsel,
HOWARD E. WAHRENBROCK,
Solicitor,
ROBERT L. RUSSELL,
Assistant General Counsel,
PETER H. SCHIFF,
Attorney,
Federal Power Commission.

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